

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MERCHANT CAPITAL, LLC and)
NEW SUNSHINE, LLC,)
)
Plaintiffs,)
)
vs.) CAUSE NO. 1:13-cv-00873-JMS-DML
) Indianapolis, Indiana
MELANIA MARKS SKINCARE, LLC,) Wednesday, November 13, 2013
) 9:05 o'clock a.m.
Defendant.) Volume 2 of 3

Before the
HONORABLE JANE MAGNUS-STINSON

TRANSCRIPT OF BENCH TRIAL, DAY 2

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PROCEEDINGS TAKEN BY MACHINE SHORTHAND
COMPUTER-AIDED TRANSCRIPTION

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1 (In open court.)

2 THE COURT: Good morning. We are in the Plaintiffs'
3 presentation of evidence. Mr. Tyra, you may call your next
4 witness unless anyone has a preliminary matter, anybody? Very
5 good. Thank you.

6 MR. PADGETT: Plaintiff calls Eric Weber, Your
7 Honor.

8 THE COURT: Mr. Weber, if you can come right up here
9 to the witness stand please, sir.

10 **ERIC HARRIS WEBER, PLAINTIFFS' WITNESS, SWORN**

11 **DIRECT EXAMINATION**

12 BY MR. PADGETT:

13 Q Good morning, Mr. Weber. If you could, please state your
14 full name for the record?

15 A Eric Harris Weber.

16 Q Are you currently employed?

17 A Yes, I am.

18 Q Where is that?

19 A DuraMark Technologies.

20 Q Before you worked there, where did you work?

21 A New Sunshine.

22 Q And what was your title at New Sunshine?

23 A President and CFO.

24 Q What time period were you the president and CFO of New
25 Sunshine?

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1 A I joined the company January 1st of 2008. I was the
2 president -- I am sorry, this started as a CFO, and then in
3 December of 2011, I became president and CFO.

4 Q As the president and CFO of New Sunshine you reported
5 directly to Steve Hilbert, correct?

6 A Yes.

7 Q When you were working at New Sunshine, your understanding
8 was that it was owned by MH Private Equity Fund?

9 A Yes.

10 Q Steve Hilbert was the manager of the equity fund?

11 A Yes.

12 Q But to your knowledge there was also a financial part
13 involved in that fund as well, correct?

14 A Yes.

15 Q And that was somehow affiliated with John Menard?

16 A Yes.

17 Q You considered Steve Hilbert to have the ultimate
18 decision-making ability on behalf of New Sunshine as the CEO,
19 correct?

20 A Yes.

21 Q While you were at New Sunshine?

22 THE COURT: I am sorry, what time period are we
23 talking about here? I thought he testified he became the CEO.

24 MR. PADGETT: I am sorry, Your Honor.

25 THE COURT: I didn't understand your last question.

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1 Could you repeat it for me?

2 BY MR. PADGETT:

3 Q You considered Steve Hilbert to have the ultimate
4 decision-making ability at New Sunshine as he was the CEO?

5 A Yes.

6 Q That was throughout the time you were at New Sunshine?

7 A Yes.

8 Q While you were there at New Sunshine would you review any
9 significant contracts with Steve Hilbert?

10 A Yes.

11 Q Would you agree Steve Hilbert could do what he wanted to
12 do with regard to New Sunshine?

13 A Yes.

14 Q As the president, you would sometimes make presentations
15 to the investment committee of Menard, Inc. in Eau Claire,
16 Wisconsin; is that right?

17 A Yes.

18 Q During some of these presentations, it was brought up that
19 there was a possibility that New Sunshine would try to acquire
20 a skincare company; is that correct?

21 A Yes.

22 Q Who was that?

23 A Peter Thomas Roth or PTR.

24 Q Whatever happened with those discussions?

25 A We did exhaustive due diligence and ultimately abandoned

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1 the deal for lack of financing.

2 Q But never during any of these presentations, at least to
3 your knowledge, did it ever come up that there was potential
4 for doing a licensing agreement with Melania Marks Skincare?

5 A Correct.

6 THE COURT: What was the timing of that deal that
7 you just described?

8 THE WITNESS: The PTR? PTR, I believe, would have
9 been in the 2010 time frame.

10 THE COURT: Okay. Thanks.

11 BY MR. PADGETT:

12 Q And then following up on that, how long did that due
13 diligence period last?

14 A Going to estimate we were engaged with PTR for anywhere
15 between six to nine months.

16 Q So at some point there was the beginning of some
17 discussions with Melania Marks Skincare to do a licensing
18 agreement, correct?

19 A Yes.

20 Q And you considered Steve Hilbert to be the lead negotiator
21 of this licensing agreement?

22 A Yes.

23 Q Scott Matthews also was negotiating the terms of the
24 licensing agreement?

25 A Yes.

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1 Q And that was under the guidance of Steve Hilbert?

2 A Yes.

3 Q Other than consulting on financial issues related to the
4 licensing agreement, you didn't have any real negotiation
5 input for the licensing agreement, did you?

6 A Correct.

7 Q Now you mentioned you were the CFO for New Sunshine. As
8 part of that role, did you create any sort of financial
9 analysis for this license agreement with Melania Marks
10 Skincare?

11 A I did.

12 Q What exactly did you do?

13 A Over time, the model evolved from say a licensing
14 arrangement or joint venture arrangement, but the model always
15 consisted of hypothetical volume levels, so the sales price
16 and assumed cost of goods sold and then estimated marketing
17 expenses to ultimately arrive at a profit.

18 Q Before these figures that you used, I believe you said
19 "hypothetical volume levels," you didn't have any historical
20 data to base these numbers on, did you?

21 A We did not.

22 Q The only input that you had for your financial models were
23 the costs and projected sales prices, but that was about it?

24 A Correct.

25 Q You also had no data on sales by competitors who also used

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1 similar ingredients in the skincare products, did you?

2 A That's correct.

3 Q In looking at the skincare line, what would you consider
4 to be the hero ingredient of those skincare products?

5 A Caviar.

6 Q If you could explain to the Court what a "hero ingredient"
7 is?

8 A Sure. A hero ingredient is an ingredient that the
9 marketing team will build its press releases, its
10 advertisements around. So, for instance, caviar was an
11 ingredient that implied speeding the anti -- fixing the
12 anti-aging process. And it was widely used in some of the
13 most prominent anti-aging products at the time.

14 Q So at some point then the license agreement, drafts of it
15 began being exchanged between the parties; is that right?

16 A Correct.

17 Q At any point did you become aware of any of the specific
18 clauses or terms within the license agreement?

19 A I, I was aware of multiple changes in the agreement,
20 multiple versions of the agreement.

21 Q Were you involved in reviewing the different drafts of the
22 license agreement?

23 A Primarily, just the financial terms.

24 Q Were you aware that Steve Hilbert was permitted to receive
25 \$50,000 worth of product every year?

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1 A I was.

2 Q And then this license agreement was ultimately signed on
3 November 1, 2012; is that correct?

4 A It was.

5 Q I will have you look in the binders there of what has been
6 admitted as Exhibit 12.

7 A Okay.

8 Q Do you recognize this document?

9 A I do.

10 Q What is this?

11 A This is the licensing agreement between Melania Marks
12 Skincare, licensor, and New Sunshine, LLC, licensee.

13 Q If you turn to page 37 of this document, is that your
14 signature there?

15 A Yes.

16 Q And you were signing this license agreement on behalf of
17 New Sunshine as its president, correct?

18 A Yes.

19 Q Can you tell me a little bit about on November 1, 2012,
20 how the signing of this agreement came to be?

21 A Sure. We were in New York, our management team, for the
22 filming of Celebrity Apprentice for the Melania Skincare
23 episode that was to air in April, and I was also present
24 because we were filming the same week the Australian Gold
25 episode that was to be aired on April 14th.

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1 Q And who was on this management team that you were with in
2 New York City?

3 A Steve Hilbert, myself, Scott Matthews, and Angie Provo.

4 Q Approximately, what time during the day do you recall
5 signing this license agreement?

6 A I don't recollect.

7 Q Okay. Were you present when Melania Trump signed this
8 license agreement?

9 A I was not.

10 Q When you signed the agreement, had she already signed it?

11 A I don't recall.

12 Q If you flip then to Exhibit 15 -- it has already been
13 admitted, Exhibit 15. Do you recognize this document?

14 A Yes.

15 Q What is this?

16 A It is a unanimous written consent, resolution of the board
17 of directors -- or board of managers of the New Sunshine, of
18 New Sunshine.

19 Q Would you agree that as the president of New Sunshine, you
20 did not need a board resolution in order to otherwise get
21 approval from somebody to authorize you to sign a document on
22 behalf of New Sunshine?

23 A I, I don't agree with that only in that certain contracts
24 will require it.

25 Q Were there other contracts that required this?

1 A Yes.

2 Q Which ones?

3 A I believe the Key Bank agreement when we renegotiated our
4 line of credit required consent of the board of managers.

5 Q In this instance, though, isn't it true Melania Marks
6 Skincare insisted on having a unanimous board resolution?

7 A I believe so.

8 Q Did you consider it to be odd that they were asking for
9 this?

10 A No.

11 Q Okay. Approximately, how many other contracts have you
12 signed on behalf of New Sunshine?

13 A I estimate 20.

14 Q So two times out of 20 is the only times that this has
15 ever happened?

16 A Correct.

17 Q Now, Steve Hilbert could have signed the license agreement
18 instead of you; is that correct?

19 A He could have.

20 Q Okay. And as a matter of fact, are you aware of multiple
21 drafts in the license agreement where Steve Hilbert was listed
22 as the signatory for New Sunshine?

23 A I am aware of that.

24 Q Are you even aware of a draft of the license agreement two
25 weeks before November 1, 2012, where Steve Hilbert is still

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1 listed as the signatory for New Sunshine?

2 A I don't remember that.

3 Q Do you recall being deposed in this case on August 9,
4 2013?

5 A Yes.

6 Q Do you recall being asked questions about a draft of a
7 license agreement that was done, that was dated approximately
8 two weeks before this license agreement was actually signed in
9 this case?

10 A Yes.

11 Q And do you recall your testimony being, the question
12 answered in this case was and so this --

13 MR. FUNK: Could I have a page?

14 MR. PADGETT: I am sorry, it is page 164.

15 BY MR. PADGETT:

16 Q The question being, "and so, this is exactly two weeks or
17 almost exactly two weeks before the actual completion of this
18 agreement. It still has Steven C. Hilbert as the signatory
19 for New Sunshine; is that correct?"

20 Your answer was, "correct."

21 A Yes, it was when I was looking at the agreement.

22 Q That kind of refreshes?

23 A Yes, yes.

24 Q You would agree then that two weeks beforehand Steve
25 Hilbert was still being listed as the signatory for New

1 Sunshine?

2 A Yes.

3 Q You were never informed during that two-week period during
4 that last draft and November 1, 2012, as to why it was changed
5 from Steve Hilbert to you?

6 A I was not.

7 Q Now, looking then at the board resolution here, whose
8 signatures are on that board resolution?

9 A Steve Hilbert, Rollie Dick, James Adams, Tomisue Hilbert,
10 and myself.

11 Q So on one hand you had Steve Hilbert saying you had the
12 authority to sign this license agreement, correct?

13 A Yes.

14 Q Do you remember when that board resolution was signed?

15 A I believe that day.

16 Q That day being November 1, 2012?

17 A Yes.

18 Q Was it signed before or after the license agreement was
19 signed?

20 A I don't recall. I assume we signed it in the morning and
21 we were, due to our logistical, we had people in different
22 parts of the country, we were scanning and sending around the
23 country.

24 Q Do you remember if the group of you that were in New York
25 signed it first and then sent it back to the other two, Rollie

1 Dick and Jim Adams, or had they signed it first?

2 A I believe we signed it first or --

3 MR. PADGETT: That is all the questions I have,

4 Mr. Weber. Thank you very much.

5 THE WITNESS: Thank you.

6 THE COURT: You may cross-examine.

7 **CROSS EXAMINATION**

8 BY MR. FUNK:

9 Q Good morning, Mr. Weber.

10 A Good morning.

11 Q Would you tell us, please, your address?

12 A 604 East Columbine Lane, Westfield, Indiana.

13 Q And what is your date of birth, sir?

14 A 11/27/1970.

15 Q Starting with your education after high school, would you
16 tell us from where you graduated from high school?

17 A Wauseon High School.

18 Q And where is that?

19 A In Northwest Ohio.

20 Q What year did you graduate?

21 A 1989.

22 Q Did you continue your education after graduating from high
23 school?

24 A I did.

25 Q And where?

1 A University of Cincinnati.

2 Q What years were you a student at the University of
3 Cincinnati?

4 A 1989 through 1994.

5 Q Did you graduate from there?

6 A Yes, I did.

7 Q In what year?

8 A 1994.

9 Q What did you obtain your degree in?

10 A Bachelor's of business administration.

11 Q And in any particular concentrated area?

12 A Accountant.

13 Q Okay. Are you an accountant then by education?

14 A Yes.

15 Q Are you a Certified Public Accountant?

16 A Yes.

17 Q When did you receive your certification and in what state?

18 A 1994 I passed the CPA exam in Ohio.

19 Q And are you currently a Certified Public Accountant in
20 good standing?

21 A Yes.

22 Q And have you continued to be a Certified Public Accountant
23 in good standing since you were originally certified in the
24 State of Ohio?

25 A Yes.

1 Q So during your years as chief financial officer of New
2 Sunshine, you were a Certified Public Accountant?

3 A Yes.

4 Q Now, after graduating from the University of Cincinnati,
5 what did you first do for employment?

6 A I worked for the international accounting firm KPMG Peat
7 Marwick.

8 Q What office?

9 A Cincinnati.

10 Q What area of public accountancy did you practice in?

11 A Audit.

12 Q And how long did you do that?

13 A From 1994 through 2000.

14 Q Were any of your clients private equity companies?

15 A My clients were companies that had private equity
16 investors.

17 Q Okay. How long did you practice public accountancy with
18 KPMG?

19 A From 1994 through 2000.

20 Q Were you, in your estimation, successful in your career?

21 A I was.

22 Q Did you receive promotions?

23 A I did.

24 Q Why did you ultimately leave KPMG?

25 A For a better opportunity.

1 Q Again, that was in what year?

2 A I believe it was in 2000.

3 Q And what was your next employment?

4 A With, with a technology consulting firm by the name of
5 marchFIRST.

6 Q What position did you take with that firm?

7 A Director of portfolio management.

8 Q And what did that work involve?

9 A It involved investing in our clients, either preferred
10 stock instruments in the form of -- generally services for
11 equity.

12 Q How long did you work in that position?

13 A About seven months.

14 Q Why did you leave marchFIRST?

15 A A potential investment that had been offered to our group
16 needed a CFO, and I saw it as an opportunity to go out in the
17 industry as a CFO.

18 Q What company did you go with?

19 A A company called A.F. Kelly.

20 Q Where was it based?

21 A Cincinnati.

22 Q What was its business when you began there?

23 A IT consulting.

24 Q What does that mean?

25 A Working with either governmental agencies or commercial

1 clients on fixing or enhancing their IT infrastructure.

2 Q What position did you begin with that firm?

3 A Chief financial officer.

4 Q What did your work involve as CFO?

5 A Traditional CFO responsibilities, also banking
6 relationships, just traditional CFO responsibilities.

7 Q Did that include performing financial analysis?

8 A It did.

9 Q Did that include providing a financial forecasting?

10 A It did.

11 Q And did that include the creation of financial models from
12 which to predict future events?

13 A Yes.

14 Q What was the size of A.F. Kelly at the time you were its
15 CFO?

16 A \$15 million in revenue.

17 Q Annually?

18 A Yes.

19 Q With how many employees?

20 A One hundred fifty, I would estimate.

21 Q Did it do business in various states?

22 A Yes.

23 Q Now how long did you continue to serve as CFO of A.F.
24 Kelly?

25 A Until we sold the business in July of 2002.

1 Q To whom was it sold?

2 A It was sold to Haverstick Consulting.

3 Q Where was Haverstick Consulting based?

4 A Haverstick Consulting was based here in Indianapolis.

5 Q Was Haverstick a client of A.F. Kelly?

6 A No.

7 Q Okay. Now, were you involved at all in the transactional
8 work in the sale of A.F. Kelly to Haverstick Consulting?

9 A Yes.

10 Q Was that a company with which Stephen Hilbert was then
11 involved?

12 A Yes.

13 Q Is that how you met Mr. Hilbert?

14 A Yes.

15 Q Now, at the time you met Mr. Hilbert were you still
16 serving as CFO of A.F. Kelly?

17 A Yes.

18 Q What was your involvement in the sale of A.F. Kelly to
19 Haverstick?

20 A I gave the initial presentation to the Haverstick
21 management team in probably November of '11, and then from --
22 I am sorry, November of '01. Spent the next six to seven
23 months working very closely with the Haverstick management
24 team through due diligence negotiating purchase price,
25 transaction, and so forth all the way up until the closing.

1 Q So were you actively involved in the negotiations of that
2 sale?

3 A Yes, I was.

4 Q Was there a counterpart, or were there counterparts to you
5 at Haverstick?

6 A Yes.

7 Q Who was that or who were they?

8 A It was primarily Rollie Dick and Steve Hilbert.

9 Q Is that how you first met Rollie Dick?

10 A It is.

11 Q And what was Mr. Dick's position at that time as you
12 understood with Haverstick?

13 A Chief financial officer.

14 Q Was a deal finally reached between A.F. Kelly and
15 Haverstick?

16 A Yes.

17 Q In the range of complexity of one company acquiring
18 another company, how would you describe the relative
19 complexity of that purchase and sale?

20 A Fairly complex, given the fact that we had private
21 investors within A.F. Kelly, and we had a stock option plan at
22 the time that under SEC rules or Indiana rules, we had to do
23 substantial work in almost putting together a prospectus
24 because of a credited and nonaccredited investor, so it was
25 complex.

1 Q Did you learn during that transaction of the name John
2 Menard?

3 A I did.

4 Q And how did you learn of Mr. Menard?

5 A That in order to finance the purchase of A.F. Kelly,
6 Haverstick was raising money as well.

7 Q And did they raise money, in part, for Mr. Menard?

8 A I believe so.

9 Q Were Mr. Dick and Mr. Hilbert also investors?

10 A Yes.

11 Q How did you find Mr. Hilbert to be from the standpoint of
12 his business acumen, skills, and ethics in those negotiations?

13 A Fair.

14 Q Did you have any question in your mind at all about the
15 reliability of Mr. Hilbert during your negotiations on that
16 transaction?

17 A I did not.

18 Q Was it an arm's length transaction?

19 A Yes.

20 Q Following the consummation of that transaction, did you go
21 with Haverstick Consulting?

22 A I did.

23 Q And that would have been when?

24 A August of 2002.

25 Q In what position did you begin your employment with

1 Haverstick?

2 A I believe I was director of finance, primarily for the
3 government services division.

4 Q Did that position ultimately change during your employment
5 with Haverstick?

6 A It did.

7 Q And when did it change?

8 A I can't remember specifically, but at some point I was
9 promoted to CFO.

10 Q Would you estimate for the Court when that occurred?

11 A Maybe late '03, 2003 maybe.

12 Q Where was Haverstick corporate headquarters, or where were
13 the Haverstick corporate headquarters physically located?

14 A At Carmel.

15 Q At what address if you recall?

16 A 116th and Pennsylvania.

17 Q And Haverstick's business was what at that time?

18 A IT consulting, management consulting.

19 Q What was the scope of the Haverstick business by the time
20 you became CFO?

21 A We were -- scope in terms of revenue?

22 Q Yes.

23 A We were probably 40 million in sales.

24 Q Annually?

25 A Annually.

1 Q Those would be gross sales?

2 A Gross sales.

3 Q And approximately how many employees and consultants did
4 Haverstick have during the period of time you served as its
5 CFO?

6 A Well, we ultimately grew the company through acquisition,
7 and as CFO, I believe we had as many as 450 to 500 employees.
8 The revenue had ultimately reached just shy of 100 million in
9 sales.

10 Q Were you involved in those acquisitions?

11 A I was.

12 Q From the standpoint of financial forecasting?

13 A Yes.

14 Q And analysis?

15 A Yes.

16 Q Was there a time during your career at Haverstick when you
17 took on additional responsibilities to those of the chief
18 financial officer?

19 A Yes.

20 Q And what additional responsibilities did you take on?

21 A I was never officially anointed the chief operating
22 officer, but our company didn't technically have one. So
23 after acquiring a business in 2004 in Washington DC, I took on
24 the role of integrating that acquisition and essentially took
25 over much of what would traditionally be chief operating

1 officer in addition to my CFO responsibilities.

2 Q So without the title, you nevertheless were serving in a
3 traditional role of COO?

4 A Yes.

5 Q During your years at Haverstick, was Mr. Stephen Hilbert
6 involved in running the company?

7 A Yes.

8 Q What do you recall his position to have been?

9 A A CEO.

10 Q And what was your impression of Mr. Hilbert's business
11 skills, acumen, and ethics during the period of time that you
12 worked with him as an officer at Haverstick?

13 A They were great. He provided strategic direction for us
14 as a management team.

15 Q Did you have any indication at any time during the years
16 that you worked with Mr. Hilbert at Haverstick that he could
17 not or should not be implicitly trusted from the standpoint of
18 his business skills or ethics?

19 A I did not.

20 Q Did you find him to be both forthright and honest?

21 A Yes.

22 Q Now, what happened to Haverstick Consulting?

23 A We sold the business on December 31 of 2007 to a
24 publicly-traded firm by the name of Kratos.

25 THE COURT: I am sorry, can you spell that?

1 THE WITNESS: K-R-A-T-O-S.

2 BY MR. FUNK:

3 Q Were you involved at all in the negotiation of the sale of
4 Haverstick to Kratos?

5 A I was.

6 Q What was your involvement in that negotiation?

7 A Mr. Hilbert would have been the lead negotiator as it
8 related to purchase price and some of the deal terms, however,
9 I took the lead on making sure the transaction was completed,
10 so all the due diligence items and working with the other
11 side's counsel and due diligence team.

12 Q Again, did that involve and include financial analysis?

13 A It did.

14 Q To determine whether or not Haverstick was receiving an
15 appropriate value for the company?

16 A Yes, and we also had a fairness opinion from a third
17 party.

18 Q Okay.

19 THE COURT: Who was the third party?

20 THE WITNESS: BB&T.

21 BY MR. FUNK:

22 Q Would you identify that?

23 A BB&T Bank. I am not sure what the BB&T stands for.

24 Q Did you consider the transaction between Haverstick and
25 Kratos to be a sophisticated transaction?

1 A Yes.

2 Q Now, after Haverstick was sold to Kratos, what did you
3 then do next, Mr. Weber?

4 A I went to work immediately for New Sunshine.

5 Q So you started at New Sunshine when?

6 A January 1st or 7th of '08. So we sold New Sunshine -- or
7 Haverstick on December 31 of '07.

8 Q And how did you find that employment with New Sunshine?

9 A Given the common involvement of Mr. Hilbert and Mr. Dick
10 with the two companies in the fall of that year, when the sale
11 became eminent that Haverstick was going to be sold, they knew
12 I would be looking for a new opportunity. And they
13 essentially recruited me for that position as I had begun
14 looking outside, other opportunity.

15 Q So when you joined New Sunshine, was it in the position as
16 CFO?

17 A Yes.

18 Q Okay. Where were the New Sunshine corporate offices then
19 located?

20 A At 71st Street.

21 Q In Indianapolis?

22 A Here in Indianapolis.

23 Q In an office building?

24 A Yes.

25 Q Were there any other businesses in that office building

1 when you started there?

2 A Yes.

3 Q Are you familiar with the MH Private Equity Fund?

4 A Yes.

5 Q Where were the fund's offices when you started with New
6 Sunshine?

7 A They were on the second floor on the right-hand side of
8 the building.

9 Q Where were New Sunshine's offices?

10 A On the second floor on the left side of the building and
11 also the first floor.

12 Q Where was your office?

13 A With New Sunshine?

14 Q Yes.

15 A On, on the second floor on the New Sunshine portion of the
16 building.

17 Q Was Mr. Hilbert already with the company when you started
18 there?

19 A Yes.

20 Q Okay. So he had been with both Haverstick and New
21 Sunshine?

22 A Yes.

23 Q Where was Mr. Hilbert's office located when you first
24 began with New Sunshine?

25 A Located in the MH Equity suite.

1 Q Across the hall from New Sunshine?

2 A Yes.

3 Q What was your initial understanding of the relationship,
4 if any, between New Sunshine and MH Equity, Private Equity
5 Fund?

6 A New Sunshine was a portfolio company of the fund.

7 Q And what did that mean to you?

8 A That the ownership of the company was by MH Equity.

9 Q From the standpoint of how the two entities operated, what
10 was your understanding?

11 A That upon joining the company there was a monthly meeting
12 with the key principals within New Sunshine that would go over
13 financial results and strategic initiatives, and those
14 meetings would generally take place in the offices of MH
15 Equity.

16 Q So that New Sunshine would be reporting its business
17 affairs to the equity fund?

18 A Yes.

19 Q Were you ever involved in those?

20 A Yes.

21 Q Was Mr. Hilbert involved?

22 A Yes.

23 Q Were any of the other officers of New Sunshine involved in
24 those reporting sessions?

25 A Yes.

1 Q From an operational standpoint, what was your initial
2 understanding of how New Sunshine operated in relation to MH
3 Private Equity Fund?

4 THE COURT: I am sorry, can I ask a follow-up
5 question just while we were on the reporting issue? To whom
6 were you reporting?

7 THE WITNESS: To MH Equity.

8 THE COURT: But like human beings, by name, who were
9 --

10 THE WITNESS: Steve Hilbert, Rollie Dick would
11 attend those meetings, Jim Adams, and Ron Gerwig, the
12 principals of MH Equity.

13 THE COURT: Okay.

14 BY MR. FUNK:

15 Q Did you attend any of those meetings and make reports
16 when, for lack of a better term, Her Honor is referring to it
17 as the family tree. Where there were people from Menard, Inc.
18 and Merchant Capital there as well?

19 A Ultimately.

20 Q Ultimately what?

21 A I believe three -- I believe I attended three meetings
22 which were called the Menard investment committee meetings.

23 Q And who would have been on the MH Private Equity Fund or
24 Menard investment committee that you reported to?

25 A I didn't personally report to anybody. We presented to

1 Mr. Menard himself and what appeared to be the balance of the
2 board of directors of Menard.

3 Q And you did that on three occasions?

4 A I believe so.

5 Q Where did you make those presentations?

6 A In Eau Claire, Wisconsin.

7 Q Ultimately was one of those presentations concerning New
8 Sunshine's desire to get into a new product line of beauty?

9 A Yes.

10 Q Do you recall when you made that presentation to the
11 Menard investment committee?

12 A I, I believe I presented jointly with our former
13 president, Leslie Hartlieb, sometime in '09, maybe early 2010.

14 Q Okay. Why did you make that presentation?

15 A Our core business at New Sunshine had begun to
16 deteriorate, which our core business was indoor tanning. And
17 it was a combination of the overall economic factors of the
18 recession and then also just a lot of negativity around indoor
19 tanning which was causing our core business to have a decrease
20 in revenues.

21 Q And because that was occurring, then what did New Sunshine
22 choose to do?

23 A Our desire was to diversify the business and play upon our
24 core competencies, which were developing products, lotions,
25 and skincare-type products. So we had several options. We

1 had the option of expanding our outdoor product line, which
2 was SPF or sun protection lotions. But then also the bigger
3 picture was to try to get into an adjacent market, which is
4 high-end beauty.

5 Q Did you, as CFO of the company, think this expansion into
6 this new product line was in New Sunshine's best interest?

7 A Yes.

8 Q Did you think it was wise?

9 A Yes.

10 Q Did you think it was even necessary from a company
11 preservation standpoint?

12 A Yes.

13 Q Now, at some point, Mr. Weber, at New Sunshine, did you
14 take on an additional hat beyond that of CFO?

15 A Yes.

16 Q And what additional hat did you take on?

17 A More of a corporate development role in addition to my CFO
18 role.

19 Q And ultimately were you also named president?

20 A Ultimately, yes.

21 Q And what year was that?

22 A December 1st of 2011, ultimately the president.

23 Q Okay. Now, from the standpoint of an organizational
24 governance, did New Sunshine have a governance separate from
25 MH Private Equity Fund as from the standpoint of officers and

1 boards?

2 A We did, yes. We, we had a group of officers within New
3 Sunshine and then a board of managers at New Sunshine.

4 Q And that would have included throughout 2012?

5 A Yes.

6 Q And throughout 2011?

7 A Yes.

8 Q Now, you were CFO and then president as well, correct?

9 A Yes.

10 Q Of New Sunshine. And what position did Mr. Hilbert occupy
11 during that same period of time?

12 A CEO.

13 Q And do you know Scott Matthews?

14 A I do.

15 Q Did Scott Matthews work at New Sunshine during the period
16 you were there?

17 A He did.

18 Q And what positions did Scott Matthews hold during, again,
19 2011 and 2012?

20 A General counsel and I believe ultimately, vice president
21 or executive vice president of corporate development.

22 Q What was your impression of Scott Matthews as a colleague
23 at New Sunshine?

24 A Scott did great legal work. He was tasked with also
25 managing our product development process and creative and so

1 forth, and I felt our launches were successful.

2 Q Had he been involved in product launches for New Sunshine
3 before the Melania Marks Skincare product launch?

4 A Yes.

5 Q Was it your impression that in addition to being a lawyer,
6 Scott knew his client's business?

7 A He did.

8 Q On a hands-on basis?

9 A Scott actually knew our business before coming on as
10 general counsel because he had been assigned to our account
11 while working for Ice Miller.

12 Q And that was his springboard then to become general
13 counsel of New Sunshine?

14 A Yes.

15 Q Did the two of you work closely at New Sunshine?

16 A We did.

17 Q Tell us the extent of that.

18 A Yes. I, I worked closely with all of my direct reports.
19 We had formalized meetings on a weekly basis and ad hoc
20 meetings throughout. Scott was critical at certain times of
21 the year more than others for -- specifically on product
22 launching. We would launch products every year in the
23 November time frame, so there was always a rush to make sure
24 everything was done correctly and available for sale on
25 November 1st. So I would work more closely with Scott at

1 certain times of the year.

2 Q By the time November 1, 2012 came around, which we all
3 know is the date the license agreement issue was executed, did
4 you consider yourself to be a sophisticated business person in
5 New Sunshine's business?

6 A Yes.

7 Q Did you consider Scott Matthews to be a sophisticated
8 business person in the business and operations of New
9 Sunshine?

10 A Yes.

11 Q Did you consider New Sunshine to have been a sophisticated
12 negotiator and participant in the process that resulted in the
13 execution of the license agreement at issue in this case?

14 A Yes.

15 Q Now again, during the years you were serving as CFO and
16 then president of New Sunshine and Mr. Hilbert was CEO, was
17 there anything ever in your dealings with Mr. Hilbert or your
18 observation and knowledge about how he went about his business
19 that gave you concern either from the standpoint of
20 competence, experience, or ethics?

21 A No.

22 Q Once New Sunshine made the decision to try to get into the
23 beauty line because of the erosion of other parts of its core
24 businesses, you made a presentation to the Menard investment
25 committee, correct; is that correct?

1 A Yes.

2 Q And there were internal New Sunshine discussions and
3 analysis, correct?

4 A Correct.

5 Q And then what else did New Sunshine do to advance the
6 ball?

7 A The beauty area?

8 Q Yes.

9 A So we looked at opportunities to grow the business
10 organically or to acquire, and our first venture was to try to
11 acquire an existing business. And that would have been PTR
12 that we referred to before, went through the exhaustive
13 process of doing due diligence, trying to find financing to
14 secure that acquisition. Ultimately we were unsuccessful.

15 After that we embarked on the process of trying to go
16 down the path of putting beauty products or products on QVC,
17 then hired a consultant from QVC who had expertise of placing
18 products within QVC --

19 Q May I have that consultant's name?

20 A Suzanne Pengally.

21 Q Where did Miss Pengally work?

22 A I believe she was an independent consultant.

23 Q Did she have experience with product lines being marketed
24 on QVC?

25 A Yes, she did.

1 Q I am going to continue along that line of questioning,
2 Mr. Weber, of New Sunshine's dealings with QVC. But I want to
3 go back for just a moment to your presentations to the Menard
4 investment committee. And again, you did that three times,
5 you think?

6 A I believe so.

7 Q Was John Menard a member of that committee?

8 A I believe so.

9 Q Was he present at any of those meetings for your
10 presentations?

11 A Yes.

12 Q And was Mr. Hilbert involved as a member of that
13 investment committee?

14 A Yes.

15 Q And were there other Menard, Inc. members on the
16 committee?

17 A Yes.

18 Q On any of the occasions that you made those presentations,
19 did you sense any resistance by the Menard investment
20 committee against New Sunshine pursuing this business line of
21 products or beauty line of products?

22 A Not on the concept.

23 Q Okay. And did they tacitly approve New Sunshine going
24 into the beauty business, subject to further due diligence?

25 A Yes.

1 THE COURT: May I ask a follow-up to that? Did you
2 ever meet any of the Menard people who are in the courtroom?

3 THE WITNESS: Today?

4 THE COURT: Yes.

5 THE WITNESS: Yes, I have.

6 THE COURT: Like who?

7 THE WITNESS: Mr. Smith and Mr. Cotton.

8 THE COURT: What about Mr. -- like at the time these
9 meetings were going on that we just were talking about, was
10 Mr. Smith ever there?

11 THE WITNESS: He was not.

12 THE COURT: What about Mr. Anderson who is in the
13 courtroom back there? Have you ever met him?

14 THE WITNESS: I can't remember if Mr. Anderson was
15 an observer in those meetings or not.

16 THE COURT: And outside of those meetings at any
17 time before let's say January 1, 2012, had you ever met
18 Mr. Smith or Mr. Anderson?

19 THE WITNESS: No.

20 THE COURT: Thank you. And then one last follow-up
21 on your last answer just while I am here in my notes. You
22 said "not on the concept," which makes me think there was
23 something. So what did you mean by that?

24 THE WITNESS: The only time that we had a direct
25 objection to a beauty opportunity was when the investment

1 committee decided not to move forward on financing the PTR
2 transaction.

3 THE COURT: Okay.

4 BY MR. FUNK:

5 Q But other than that, following up on Her Honor's question,
6 you did not -- you were not aware of any resistance to
7 Sunshine getting into the beauty line business?

8 A Correct.

9 Q By the Menard, Inc. investment committee?

10 A Correct.

11 Q Now, how did New Sunshine learn about Miss Pengally?

12 A I believe through one of the consultants within MH Equity.

13 Q What was the contact then with Miss Pengally? What was
14 that about?

15 A To investigate the opportunity of creating products,
16 whether it be sunless tanning lotions or systems or beauty
17 products; but just in general, to get products marketed on QVC
18 that were adjacent to indoor tanning.

19 Q And was it your understanding that Miss Pengally had some
20 experience in that?

21 A Yes.

22 Q In marketing on QVC?

23 A Yes.

24 Q What was your understanding of what her experience had
25 been on that?

1 A I didn't have direct knowledge of her past experience. I
2 relied on the fact that she had interviewed and worked with
3 the MH Equity principal or consultant.

4 Q What is the term "celebrity endorsement"? What does that
5 mean?

6 A It is when a celebrity endorses a particular product, and
7 it has become a very useful tool in things such as perfume,
8 makeup, and so forth. So some of the bigger lines now would
9 be Jennifer Lopez, and just, it seems to be a trend.

10 Q And were there any discussions with Miss Pengally about
11 who a celebrity endorser might be for a New Sunshine line of
12 beauty products?

13 A There were.

14 Q And tell us about that.

15 A Well, first of all, and I don't think they were one in the
16 same. But we had hired Katie Stamm, who was Miss America
17 2010, I believe.

18 Q "We," meaning New Sunshine?

19 A New Sunshine did, and it was after a presentation that she
20 brought to us to develop a tanning lotion line around.

21 Q "She," meaning Miss Stamm or Miss Pengally?

22 A Miss Stamm.

23 Q All right.

24 A And we ultimately entered into negotiations with her about
25 creating a beauty line around Miss Stamm. Miss Pengally then

1 took that forward to QVC, and QVC's feedback was that
2 40-year-old women generally don't buy skincare products
3 endorsed by, you know, 25-year-old Miss Americas because, in
4 theory, they don't need anti-aging creams. So the feedback
5 was, find somebody else that is more credible on those lines
6 of anti-aging and skincare.

7 Q Did Miss Pengally recommend anyone?

8 A She did not.

9 Q How did Melania Trump's name first get introduced to you
10 concerning this new beauty line that New Sunshine wanted to
11 get into to broaden its base?

12 A Sure. I believe it was all in the same time frame, the
13 fall of 2011, and it is my understanding that the Hilberts and
14 Trumps have been longtime acquaintances. And Melania is a
15 super model and has -- is a user of skincare products, has
16 knowledge, kind of fit the requirement that Suzanne brought
17 back from her meetings at QVC.

18 Q Now who is Suzanne?

19 A Suzanne Pengally, sorry.

20 Q So was New Sunshine's interest then initially in Melania
21 Trump as a celebrity spokesperson who would have an appeal to
22 maybe a more mature market agewise?

23 A Yes.

24 Q Not that there was any criticism of Miss Stamm at all but
25 you just, you needed a different type of spokesperson?

1 A That's correct, and we continued to try to incubate
2 opportunities for Miss Stamm at different price points and
3 different types of markets. But Melania's other attribute is
4 just higher end. She connotes a higher end or a more
5 prestigious beauty user which also implies a higher price
6 point.

7 Q What do you mean connotes?

8 A Gives off the aura of higher, more prestige.

9 Q Was the partnership, and I use that term loosely and not,
10 not legally. Was the partnership then between New Sunshine
11 and Melania Trump something that New Sunshine sought out?

12 A I believe so. It, it was to further our initiative of
13 getting into beauty.

14 Q Now, I am going to proceed with that line of questioning
15 again, Mr. Weber, but I want to go back to your presidency of
16 New Sunshine. In 2012, did you have the actual authority as
17 president of New Sunshine to enter into contracts on its
18 behalf?

19 A I did.

20 Q Did you do that on a number of occasions during that
21 period of time?

22 A I did.

23 Q Were you required to get Steve Hilbert's authority, or did
24 you, as president, have the capacity to sign on behalf of the
25 company?

1 A I had the authority, but I would -- it was a general
2 practice of mine to run everything by Mr. Hilbert.

3 Q But you had the authority?

4 A I believe so, yes.

5 Q Was it your understanding that you could sign contracts on
6 behalf of New Sunshine without getting approval from MH
7 Private Equity Fund?

8 A Yes.

9 Q And was that your standard practice to sign without
10 getting the fund's approval?

11 A Yes.

12 Q And without getting Merchant Capital's approval?

13 A Yes.

14 Q There are two books in front of you, Mr. Weber, and one of
15 them is called the exhibit binder for the Defendant on the
16 front. One says, I hope, Plaintiff and one Defendant. And it
17 starts -- the Defendant starts with Exhibit 200.

18 A Yes, I see that.

19 Q You see that?

20 A Yes, I see that.

21 Q Would you turn, sir, to Exhibit 205? That is an
22 employment agreement dated December 1, 2011, for you; is it
23 not?

24 A Yes.

25 Q And is that your signature on page 14?

1 A It is.

2 Q Does Section 1.2 of Exhibit 205 describe your position as
3 president of New Sunshine?

4 A Yes.

5 Q Consistent with the offices of president and chief
6 financial officer and as shall otherwise be assigned by the
7 board of managers; is that correct?

8 A Yes.

9 Q Now, would you turn next in the same book to Exhibit 204?
10 This is the third amended and restated operating agreement of
11 New Sunshine, LLC, dated September 2, 2010; is it not?

12 A It is.

13 Q Would you turn, sir, to page 23 of that document? Do you
14 see that?

15 A I do.

16 Q And does Section 9.5 describe the duties and
17 responsibilities of the president of New Sunshine?

18 A It does.

19 Q Would you turn back to page 21 of this same exhibit, and
20 do you see article, Roman numeral VIII, board of managers?

21 A Yes.

22 Q And is a board of managers created by this operating
23 agreement?

24 A It is.

25 Q And during your employment as CFO and president at New

1 Sunshine, did the board of managers of New Sunshine perform
2 functions?

3 A Yes.

4 Q And, in fact, it was that board of managers which signed
5 unanimously the written consent which authorized you to sign
6 the license agreement on November 1, 2012?

7 A Yes.

8 Q I am finished with that document. And again, was it
9 required -- was it required of you to obtain the approval of
10 anyone from Merchant Capital or MH Private Equity Fund before
11 signing contracts on behalf of New Sunshine?

12 A No.

13 Q During the years that you were CFO and president at New
14 Sunshine, was it your understanding that New Sunshine's
15 business activities and books were open to MH Private Equity
16 Fund?

17 A Yes.

18 Q And to Merchant Capital?

19 A Yes.

20 Q And that those entities could at any time come in and
21 review the business of New Sunshine?

22 A I believe so.

23 Q And its records?

24 A I believe so.

25 Q And its electronic communications?

1 A I believe so.

2 Q Mr. Anderson testified yesterday that, to the effect that
3 he either suspected or had the impression of or knew something
4 about New Sunshine scrubbing information from his business
5 records. Did you ever do such a thing?

6 A No.

7 Q Did you ever hear of anybody at New Sunshine doing such a
8 thing?

9 A No.

10 Q Did you ever see anybody do such a thing?

11 A No.

12 Q Would that conduct be inconsistent with how you always
13 understood New Sunshine went about its business?

14 A It would.

15 Q Through and including the date you were terminated?

16 A Correct.

17 Q Now, was one of the celebrity endorsements that New
18 Sunshine had during the period of time you were CFO and
19 president, Jenni Farley?

20 A She was.

21 Q Who was she?

22 A Jenni Farley was one of the cast members on a very popular
23 reality show called the Jersey Shore.

24 Q Was she known by some other name?

25 A Yes.

1 Q What was that?

2 A JWOWW.

3 Q What was the business relationship between New Sunshine
4 and Miss Farley?

5 A We had a license arrangement for indoor tanning products,
6 skincare products, perfume, and I think that is it.

7 Q Were you involved at all in that transaction?

8 A I was.

9 Q What was your involvement?

10 A Initial financial analysis.

11 Q Was there a license agreement?

12 A There was.

13 Q Do you believe you signed that?

14 A I don't recall.

15 Q All right. But you were involved in it?

16 A I was.

17 Q Was Scott Matthews involved?

18 A He was.

19 Q Was he involved in the negotiation of it?

20 A Yes.

21 Q And was Mr. Hilbert involved?

22 A Yes.

23 Q Also in the negotiation?

24 A Yes.

25 Q How did that Jenni Farley license agreement work out for

1 New Sunshine?

2 A It worked out very well for New Sunshine.

3 Q Was it profitable to New Sunshine?

4 A It was.

5 Q Was that the goal of New Sunshine agreeing to that, the
6 terms of that license agreement with Jenni Farley?

7 A It was.

8 Q Was that the goal also in agreeing to the terms of the
9 November 1, 2012, license agreement with Melania Marks
10 Skincare?

11 A Yes.

12 Q Did you think it was going to be successful to New
13 Sunshine?

14 A Yes.

15 Q "It," meaning the Melania Marks Skincare license
16 agreement?

17 A Yes.

18 Q That was the hope?

19 A In my business judgment, that was the hope.

20 Q And was it your business judgment that eventually that
21 would be a successful and profitable transaction for New
22 Sunshine?

23 A Yes, similar to prior celebrity-endorsed deals where we
24 had an up-front investment, I felt it would ultimately pay
25 off.

1 Q Now, we have heard already in the case that there was also
2 a licensing agreement between New Sunshine and what I am going
3 to refer to as the Kardashians; are you aware of that?

4 A Yes.

5 Q That also was a license agreement?

6 A Yes.

7 Q Would you turn, sir, in the same exhibit book to
8 Exhibit 207? Do you see that?

9 A I do.

10 Q Again, this is a license agreement with, again, the
11 Kardashians. It is 30 pages long. Would you turn to page 30
12 of that agreement? Is that your signature?

13 A It is.

14 Q As president and CFO of New Sunshine?

15 A Yes.

16 Q And turn back to the first page of the agreement,
17 Mr. Weber, and the date of this agreement was June 13, 2012;
18 is that correct?

19 A It is.

20 Q Now, if you would turn to page -- I can't see the document
21 page number, so turn to, in the lower right-hand corner,
22 page 36107. Do you see Section 2, term?

23 A Yes.

24 Q In making a quick calculation, does it appear to you that
25 the term of the Kardashian license agreement was four years

1 and three months?

2 A Yes.

3 Q And would you next turn to, again in the lower right-hand
4 corner, page 36114? Do you see a Subsection capital B on that
5 page?

6 A Yes.

7 Q Which provides for nonrefundable advanced payment of
8 \$1,200,000?

9 A Yes.

10 Q Did New Sunshine pay that?

11 A We did.

12 Q Did you consider that to be fair and appropriate?

13 A Yes.

14 Q How did that compare to the up-front license fee paid to
15 Melania Marks Skincare in its license agreement of November 1,
16 2012?

17 A I am going from memory here, but I believe the Melania
18 payment was structured -- going from memory, 250,000 at
19 signing and some amount at shipment and then some amount at a
20 later point, where this one was 100 percent up front.

21 Q And was Melania Marks total up-front over that period of
22 time \$1 million?

23 A I believe so.

24 Q All right. Now, in addition to -- oh, what was your
25 involvement, Mr. Weber, in the Kardashian license agreement?

1 A Primarily financial, working with our sales team to try to
2 determine the sales hurdles and so forth to make sure that
3 this royalty arrangement was feasible.

4 Q You were terminated by New Sunshine on what date?

5 A I believe it was March 1st.

6 Q Of 2013? Up to that period of time, between when the
7 Kardashian agreement, license agreement was signed and when
8 you were terminated, how was that agreement working out for
9 New Sunshine?

10 A I believe fairly well.

11 Q Okay. In New Sunshine's best interest?

12 A Yes.

13 Q Okay. Now, you have indicated to Mr. Padgett on direct
14 examination that you had signed some other contracts for New
15 Sunshine as president; is that correct?

16 A Yes.

17 MR. FUNK: At this point, Your Honor, I am going to
18 ask the witness about Exhibits 208, 210, and 211. And those
19 are three exhibits to which the Plaintiffs reserve the right
20 to challenge the admissibility of.

21 THE COURT: Okay. And if there is an objection,
22 what is the basis for it, Mr. Padgett?

23 MR. PADGETT: Your Honor, the only objection here is
24 the relevance of these documents, in that we are not disputing
25 the fact that Eric Weber had the authority to sign these other

1 contracts. We clearly acknowledge that he was able to sign
2 other contracts on behalf of New Sunshine, so to go through
3 and then examine all these other deals that were done
4 completely unrelated to the license agreement at issue in this
5 case have no relevance to the issues in this case.

6 THE COURT: Mr. Funk, so for what purpose? There
7 was a relevancy objection. Your response?

8 MR. FUNK: We respectfully submit that these other
9 contracts are relevant because they tend to establish normal
10 established custom and practice and that there was nothing
11 unusual about Mr. Weber's execution of the license agreement
12 at issue, and by way of further explanation, I have no
13 intention of going into the substance of these other three
14 agreements simply to establish that they were agreements and
15 they were signed by Mr. Weber.

16 THE COURT: Okay. For that purpose I will allow it.
17 Objection is overruled. 208, 210 and 211 are admitted.

18 MR. FUNK: Thank you.

19 (Defendant's Exhibits 208, 210, and 211
20 were received in evidence.)

21 BY MR. FUNK:

22 Q Would you turn, Mr. Weber, to Defendant's Exhibit 208?
23 This is entitled an Exclusive Lotion Manufacturing and Supply
24 Agreement dated March 15, 2012; is it not?

25 A It is.

1 Q Would you turn to page 9? Is that your signature?

2 A Yes, it is.

3 Q On behalf of New Sunshine as its president and CFO?

4 A Yes.

5 Q Would you turn next, sir, to Exhibit 210? This is called
6 Exclusive Lotion Supply Agreement dated June 19, 2012, is it?

7 A It is.

8 Q Would you turn to page 10 of this agreement? Is that your
9 signature?

10 A It is.

11 Q As president and CFO on behalf of New Sunshine, LLC?

12 A Yes.

13 Q Would you turn next to Defendant's Exhibit 211? This
14 document is called Exclusive Premier Chain Salon Agreement
15 dated July 2, 2012?

16 A Yes.

17 Q Turn to page 15, please. Is that your signature as
18 president and CFO on behalf of New Sunshine?

19 A It is.

20 Q Okay. I am completed with that document. As New Sunshine
21 began to explore the possibilities of getting into the beauty
22 business, either through QVC or some other arrangement, what
23 was New Sunshine's experience in beauty care products?

24 A We -- the company had historically had a line under the
25 Australian Gold product line that had been sold to tanning

1 salons. I don't know the ultimate success of that. It was
2 before my time, but we did hire a chemist that had extensive
3 experience in skincare.

4 Q Who was the chemist?

5 A Maxine Pesu.

6 Q Was Miss Pesu a chemist for New Sunshine during the period
7 of time that the Melania Marks licensing agreement was being
8 negotiated?

9 A Yes.

10 Q Was she involved in the deal?

11 A She was involved in creating the samples and ultimately
12 the product itself.

13 Q Did she work with Mrs. Trump in that regard?

14 A Angie Provo worked directly with Mrs. Trump; however,
15 Maxine was providing the samples and the work product.

16 Q What was Miss Provo's position at that time?

17 A I believe she was director of marketing.

18 Q Okay. From the standpoint of licensing of the product,
19 where was the Melania Marks Skincare product line going to be
20 priced?

21 A It was going to be priced in the high end, so priced to be
22 positioned in prestige beauty stores but not at the highest
23 point on the high end of the scale. So I would say somewhere
24 in the middle.

25 Q So in the fall of 2011, is there a meeting then with

1 Melania Trump?

2 A In 2011?

3 Q Yes.

4 A There must have been.

5 Q And who was involved in that meeting for New Sunshine?

6 A I am assuming it was the Hilberts.

7 Q Were you involved in that meeting?

8 A I was not.

9 Q What was your involvement, Mr. Weber, with the creation of
10 the licensing agreement at issue?

11 A My involvement had just historically been reviewing the
12 financial terms of the proposed license agreement and then
13 also running models alongside.

14 Q The financial models?

15 A Yes.

16 Q Now, this was going to be a new product line, correct?

17 A Yes.

18 Q And did that represent some risk to New Sunshine?

19 A Yes.

20 Q Do you believe that that was a risk worth taking?

21 A Yes.

22 Q And is that because it broadened New Sunshine's business?

23 A It did. It diversified our business from just a tanning
24 company, a way to utilize assets such as Maxine, such as our
25 production facility, our new production facility here in

1 Indianapolis, that had the capabilities to manufacture
2 skincare products.

3 Q Was your view shared by the other senior members of the
4 executive group at New Sunshine?

5 A I believe so.

6 Q Including Mr. Matthews and Mr. Hilbert?

7 A Yes.

8 Q Now, during the negotiating process, did you have any
9 input into the process other than financial analysis?

10 A That is pretty much it.

11 Q Did you ever have any communications with Mrs. Trump or
12 her advisors concerning the proposed transaction?

13 A I was more or less a listener on calls.

14 Q And who would have been on those calls?

15 A The Trump's counsel, Mr. Matthews, Mr. Hilbert, and there
16 were numerous calls.

17 Q Was Trump's counsel Jonathan Gross?

18 A Yes and Cathy --

19 Q Glosser?

20 A Yes.

21 Q All right. So you spoke with both of those during the
22 process?

23 A As I said, generally, I was listening, a listener.

24 Q Were you aware that multiple drafts of the agreement were
25 being created?

1 A I was.

2 Q And those drafts were going back and forth between Scott
3 Matthews and Jonathan Gross?

4 A Yes.

5 Q The two lawyers involved in the transaction?

6 A Yes.

7 Q And would you be provided with those drafts to review from
8 a financial standpoint?

9 A Generally, the financial arrangement wasn't changing
10 materially from draft to draft, so, yes.

11 Q At some point in time did you learn that you were going to
12 be asked to sign the license agreement on behalf of New
13 Sunshine?

14 A Yes.

15 Q Did that request strike you as odd or out of the ordinary
16 at all?

17 A It did not.

18 Q And why did it not?

19 A Because I had a history of signing.

20 Q Were you also going to be involved in this project with
21 Melania Marks Skincare going forward?

22 A I was.

23 Q What was your involvement going to be?

24 A Simply as a president of the company, making sure we were
25 executing on the plan.

1 Q So did you expect to be working with Melania Marks
2 Skincare people as the project went forward?

3 A Yes.

4 Q Did it make sense to you then that you would be signing
5 the agreement?

6 A It did.

7 Q That was nothing out of the ordinary?

8 A No.

9 Q When the resolution of the New Sunshine board of managers
10 came up, was it your understanding that was something Jonathan
11 Gross was asking for?

12 A I believe so.

13 Q That was signed authorizing you as president to sign the
14 license agreement?

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q Did you find that to be a red flag of anything?

19 A I did not.

20 Q Did you think that it was just another due diligence
21 requirement from a lawyer for The Trump Organization?

22 A I did. The agreement had been negotiated for 12 months
23 and heavily negotiated and it was nitpicky and so it didn't
24 strike me at all that there was one more requirement.

25 Q During the negotiating process, had Scott Matthews ever

1 expressed to you his thoughts of how the negotiations were
2 being conducted?

3 A Yes.

4 Q What did Scott tell you?

5 A He was frustrated.

6 Q Did he tell you over what?

7 A Just the back and forth, the nitpicking, the constant.

8 Q By the Trump lawyer?

9 A Yes.

10 Q From what he told you, did Scott want the deal done?

11 A Yes.

12 Q And get it papered and move on with the business of the
13 transaction?

14 A Yes.

15 Q That is finally what was done on November 1st?

16 A It was.

17 Q At any time, Mr. Weber, before you signed the November 1,
18 2012 license agreement on behalf of New Sunshine, were you
19 aware of any kind of business dispute between Mr. Steve
20 Hilbert and Mr. Menard?

21 A Yes.

22 Q Would you tell me what you were aware of and when?

23 A It was my understanding sometime in the fall, winter of
24 2011 that Mr. Hilbert and Mr. Menard were having a dispute
25 over how management fees were to be paid to MH Equity.

1 Q From whom did you learn that?

2 A Mr. Hilbert.

3 Q Do you remember any other details of what Mr. Hilbert told
4 you at that time?

5 A I don't.

6 Q Have you told us everything you recall about what Mr.
7 Hilbert told you at that time?

8 A I, I have.

9 Q Now, at any time before you signed the license agreement
10 on November 1, 2012, were you aware of any other disputes
11 between Mr. Hilbert and any of the Menard companies?

12 A I was not.

13 Q Before you signed the license agreement on November 1,
14 2012, did you have any knowledge that letters had been sent to
15 Mr. Hilbert in June of 2012 purportedly removing him from his
16 authority to act on behalf of certain entities?

17 A I did not.

18 Q Before you signed the November 1 license agreement, had
19 Mr. Hilbert ever shown you those June 2012 letters?

20 A He did not.

21 Q Or had he ever disclosed to you in any way that those
22 letters existed?

23 A No, he didn't.

24 Q Or had been sent to him?

25 A No.

1 Q At any time before you signed the license agreement on
2 November 1, 2012, did you have any inkling that there was any
3 question about Steve Hilbert's right to participate in the
4 negotiation of this deal?

5 A Did not.

6 Q Sometime after you signed the license agreement on
7 November 1, 2012, did you become aware of a bigger or broader
8 issue between Mr. Hilbert and the Menard companies beyond the
9 management fee issue that you learned about in the fall or
10 winter of 2011?

11 A I did.

12 Q How did you learn of this?

13 A I believe it was either the end of November or the first
14 week of December where Mr. Hilbert made me aware of court
15 filings that were taking place or going back and forth and
16 wanted to make me aware that there was issues.

17 Q Do you recall what he told you about the issues?

18 A He -- that there was a request for removal.

19 Q Of him?

20 A Of him.

21 Q And this would have been in late November or early
22 December of 2012?

23 A Yes.

24 Q Again, after the November 1, 2012, license agreement with
25 Melania Marks Skincare had been executed?

1 A Yes.

2 Q And by the time you learned of this removal litigation,
3 had New Sunshine already begun performing the license
4 agreement?

5 A We had.

6 Q And had Melania Marks Skincare already begun performing
7 the agreement?

8 A Yes.

9 Q Now, was the litigation what you subsequently learned was
10 the Wisconsin litigation or some of it?

11 A Can you repeat the question?

12 Q Yes. Did Mr. Hilbert tell you in late November, early
13 December 2012 that the litigation had been filed in Wisconsin?

14 A Oh, yes.

15 Q All right. And did you actually review the complaint?

16 A I scanned over it.

17 Q Okay. With the existence of that complaint and with what
18 Mr. Hilbert had told you about the litigation, why did New
19 Sunshine continue to perform the license agreement with
20 Melania Marks?

21 A Because we were executing a business plan.

22 Q A business plan to broaden the business of New Sunshine?

23 A Yes.

24 Q Which you felt was in New Sunshine's best interest?

25 A I did.

1 Q Did Mr. Hilbert ever instruct you or suggest to you or
2 propose to you that New Sunshine discontinue performance of
3 the license agreement with Melania Marks because of the
4 existence of this Wisconsin litigation?

5 A He did not.

6 Q When did you first see Mr. Weber, the June 2012 letters
7 from James Anderson to Steve Hilbert purportedly removing Mr.
8 Hilbert from authority to act on behalf of certain entities?

9 A I believe it was in my deposition.

10 Q And your deposition was taken within the past several
11 months?

12 A In August.

13 Q Of this year?

14 A Yes.

15 Q In this case?

16 A Yes.

17 Q That is the first time you ever saw those letters?

18 A Yes.

19 Q Is that the first time you knew about them?

20 A Yes.

21 Q So when those letters were sent to Mr. Hilbert in June of
22 2012, they were not sent to you as president?

23 A No.

24 Q As you were involved in this more-than-a-year-negotiation
25 transaction, did you recognize Melania Trump bringing anything

1 of value to this transaction?

2 A I did.

3 Q What was that?

4 A She had past experience on QVC. She has brand cache, and
5 it was our entree into the prestige beauty market. She
6 brought credibility, in my opinion, to a product versus us
7 just creating a product and trying to get it into the stores.

8 Q You were in New York City when you signed the agreement?

9 A Yes.

10 Q And was a Celebrity Apprentice show shot then?

11 A It was.

12 Q Were you involved at all in that?

13 A Just observing.

14 Q Was anybody else from New Sunshine involved?

15 A Angie Provo was actually on the show.

16 Q With Mrs. Trump?

17 A Yes.

18 Q Was New Sunshine charged for that Celebrity Apprentice
19 show?

20 A Just for the -- I believe it is called creative or the
21 production. I think it was \$100,000.

22 Q What -- did you learn what a normal charge would have been
23 by the Celebrity Apprentice show?

24 A Approximately a million three, million two.

25 Q Dollars?

1 A Yes.

2 Q So did New Sunshine get essentially a million dollars of
3 free advertising on the first day of the license agreement?

4 A I believe so.

5 Q Did you consider that to be New Sunshine's benefit?

6 A Yes.

7 Q I want to go back before getting to the conclusion of your
8 relationship with New Sunshine. As CFO, did you do some
9 financial forecasting on how well or how poorly New Sunshine
10 would be doing during its fiscal year ending October 31, 2013?

11 A Yes.

12 Q Did you project a profit?

13 A Yes.

14 Q How much?

15 A I believe we were projecting a profit with an EBITDA of
16 \$15 million.

17 Q And EBITDA is earnings before interest, amortization,
18 depreciation, and taxes?

19 A Yes.

20 Q And then what was the projection for the following fiscal
21 year?

22 A I don't recall.

23 Q And was that EBITDA projection even with the start-up
24 costs on this project?

25 A We had projected for that project to break even at the

1 time of our initial projection.

2 Q And did you also project that eventually this license
3 agreement between New Sunshine and Melania Marks Skincare
4 would be profitable to New Sunshine?

5 A Yes, absolutely.

6 Q Maybe not the first year?

7 A Right.

8 Q But ultimately it would be profitable?

9 A Absolutely.

10 Q And in New Sunshine's best interest?

11 A Yes.

12 THE COURT: I am going to follow up on one of your
13 earlier questions. I think this is what you are asking, but
14 if not, then I am. The EBITDA of 15 million, that would have
15 included the payments, the approximately \$1 million in
16 payments?

17 THE WITNESS: When we did our budget for 2013, we
18 excluded the effects of the Melania transaction because we
19 felt it would be neutral. So our assumption was that it would
20 be neutral to our income statement.

21 THE COURT: Okay. That is maybe not answering my
22 question. You either assumed it away or didn't pay attention
23 to it or thought that if you paid her the million you would
24 only --

25 THE WITNESS: Yes, that we would recoup.

1 THE COURT: It would recoup your expenses, but that
2 is all?

3 THE WITNESS: Right.

4 THE COURT: Okay.

5 BY MR. FUNK:

6 Q For the fiscal year ending October 31, 2013, was New
7 Sunshine's business on the upswing?

8 A It was. It was recovering.

9 Q And had it recovered during the previous fiscal year from
10 the year before that as well?

11 A It had.

12 Q So it had hit bottom during the great recession and was
13 swinging up?

14 A I would say it hit bottom in 2010.

15 Q Okay. Would you turn next, Mr. Weber, to Defendant's
16 Exhibit 265? Do you see that, sir?

17 A Yeah. Yes.

18 Q This is an e-mail from you dated February 27, 2013?

19 A Yes.

20 Q To Mr. Rod Smith; is that correct?

21 A Yes.

22 Q And you're transmitting to Mr. Smith a copy of the Melania
23 license agreement?

24 A Yes.

25 Q What was the context in which this e-mail was

1 communicated?

2 A I believe Mr. Smith just asked for copies of these three
3 particular agreements; so therefore, they were provided.

4 Q And you knew Mr. Smith, did you?

5 A I did.

6 Q Do you know him to be a financial person with Menard,
7 Inc.?

8 A Yes.

9 Q And, in fact, during your years as CFO, would you from
10 time to time report to Mr. Smith?

11 A We would send Mr. Smith documentation.

12 Q Concerning New Sunshine's business?

13 A Monthly financials.

14 Q Would Mr. Smith come down from time to time and review how
15 New Sunshine was doing?

16 A No. The first time I met Mr. Smith was, I believe, in the
17 February time frame.

18 Q And what was that occasion?

19 A It was -- I believe it was after Mr. Hilbert had been
20 officially removed in Wisconsin by a court order.

21 Q How did you learn of that court order, if you did?

22 A I learned of it with, when Mr. Smith, Mr. Liupakka, and
23 one of Mr. Menard's sons came down and met, met in the offices
24 of MH Equity.

25 Q And they provided you at that time with a copy of the

1 order?

2 A Yes.

3 Q And told you about it?

4 A Right.

5 Q And was it your understanding then, effective of that
6 court order, that Mr. Hilbert was no longer going to be
7 involved?

8 A Correct.

9 Q What else was involved at that time in that discussion
10 with those three?

11 A We talked about the general nature of the business, did a
12 plant tour of the facility, and I believe the following day
13 went down and looked at our lotion manufacturing facility.

14 Q And was the lotion manufacturing facility where the
15 Melania Marks Skincare lotions would be manufactured?

16 A Yes.

17 Q And then shipped to wherever?

18 A Yes.

19 Q Were you asked at that time by any of those three
20 gentlemen anything about the Melania Marks Skincare license
21 agreement?

22 A I don't recall.

23 Q Or why it had been created?

24 A I don't recall.

25 Q Or anything else about it?

1 A I don't.

2 Q So you sent the license agreement to Mr. Weber, correct?

3 A To Mr. Smith.

4 Q Excuse me, to Mr. Smith. And what was your next
5 involvement?

6 A That was pretty much it, because there is February 27th,
7 and then I was terminated on March 1st.

8 Q Where were you when you were terminated?

9 A I was on my way back from a business trip.

10 Q For whom?

11 A To visit prospects on some different opportunities and
12 then also an existing customer, which was the Kardashians.

13 Q When you say "prospects," do you mean business prospects
14 for New Sunshine?

15 A Yes.

16 Q To advance New Sunshine's business?

17 A Yes.

18 Q Would those have been celebrity deals?

19 A Not necessarily. They would be more -- there was a
20 license arrangement, maybe two different license arrangements.

21 Q And so how did you learn that you were being terminated?

22 A I received an e-mail.

23 Q Would you turn to Exhibit 266, Defendant's Exhibit 266?

24 Is that the e-mail to which you refer?

25 A Yes.

1 Q "Effective immediately your employment with New Sunshine
2 is being terminated for just cause"; do you see that?

3 A Yes.

4 Q What was your reaction when you received this termination?

5 A Disappointment.

6 Q Were you aware of any just cause?

7 A I was not.

8 Q Were you doing your job as you thought best?

9 A I was.

10 Q Now, on this business trip to California, was anyone else
11 from New Sunshine with you?

12 A Mr. Matthews.

13 Q Did you learn on March 1st that Mr. Matthews had been
14 terminated by New Sunshine as well?

15 A I did.

16 Q How did the two of you learn that?

17 A I called Mr. Matthews.

18 Q And where were you and where was he?

19 A I am not sure if he was back in Indianapolis or if he was
20 on another plane or --

21 Q Did he tell you at that time he too had been terminated
22 that day?

23 A Yes.

24 Q Has anybody from New Sunshine ever told you why you were
25 terminated?

1 A No.

2 Q Did you ever go back to the New Sunshine corporate
3 offices, Mr. Weber, after receiving Mr. Cotton's March 1, 2013
4 termination e-mail?

5 A I did.

6 Q And when was that?

7 A Monday the 4th of March.

8 Q Is that the last time you have been there?

9 A Yes.

10 Q And what did you do when you were in there on Monday,
11 March 4th?

12 A I collected my belongings.

13 Q Did anybody from New Sunshine talk with you then about the
14 previous Friday's termination?

15 A I spoke with Mr. Cotton and Mrs. Horner, who was the vice
16 president of operations in human resources.

17 Q And what did they tell you about why you had been
18 terminated?

19 A I inquired to Mr. Cotton what the cause was, and he had
20 none to provide me at that time.

21 Q Was that the last communication you have had with
22 Mr. Cotton?

23 A I followed up with Mr. Cotton maybe within a week of that
24 via a phone call.

25 Q And what was discussed at that time?

1 A The concept of potentially resigning versus being
2 terminated.

3 Q Did you choose one or the other?

4 A We had agreed that at that point that New Sunshine would
5 allow me to resign, and then upon review of and engaging in
6 counsel for myself, I decided not to go down that path.

7 Q Mr. Weber, did it matter to you in signing this license
8 agreement of November 1, 2012, on behalf of New Sunshine, what
9 the ownership or control of the private equity funds were
10 upstream from New Sunshine?

11 A No.

12 MR. FUNK: I am just about finished, Your Honor.

13 BY MR. FUNK:

14 Q Would you turn, sir, to Defendant's Exhibit 200? This is
15 a May 14, 2013 amended complaint for declaratory judgment and
16 injunctive relief filed in this lawsuit. Would you turn,
17 Mr. Weber, to page 6 of this amended complaint?

18 Paragraph 22 of the amended complaint alleges, quote,
19 the license agreement is so grossly unfavorable to New
20 Sunshine that it constitutes corporate waste.

21 When you signed the license agreement, did you think
22 that it constituted corporate waste?

23 A No.

24 Q Paragraph 23 states, quote, the license agreement is so
25 grossly unfavorable to New Sunshine that it constitutes gross

1 mismanagement. When you signed the license agreement, did you
2 consider it to be grossly unfavorable to New Sunshine?

3 A No.

4 Q Would you have signed the license agreement on behalf of
5 New Sunshine had you felt that it was unfavorable to New
6 Sunshine?

7 A I would not have.

8 Q Paragraph 24 alleges, quote, Melania Marks Skincare was
9 aware of the foregoing improper conduct and conspired with
10 Hilbert Managing Member I and/or Weber to enter into a
11 contract that, among other things, breached Hilbert's Managing
12 Member I's and Weber's obligations to New Sunshine and while
13 knowing the license agreement would cause injury to New
14 Sunshine and its shareholders.

15 When you signed the license agreement on November 1,
16 2012, with Melania Marks Skincare, were you in conspiracy with
17 anyone?

18 A No.

19 Q Did you believe it would cause injury to New Sunshine?

20 A No.

21 Q Did you conspire with Melania Marks or Melania Trump or
22 any of her advisors or company in any fashion concerning the
23 execution or performance of the license agreement?

24 A No.

25 MR. FUNK: That concludes my cross-examination.

1 THE COURT: Thank you. Redirect?

2 **REDIRECT EXAMINATION**

3 BY MR. PADGETT:

4 Q Okay Mr. Weber, there was some testimony early on about
5 you being a CPA, correct?

6 A Yes.

7 Q And you're almost -- almost been 20 years now?

8 A Yes.

9 Q So as a CPA, would you agree then that the financial
10 analysis that you did without any real data to base that on
11 doesn't really hold much water?

12 A I would not agree with that.

13 Q Why not?

14 A Because we had -- the only variable that we were missing
15 is what the actual demand for the product would be.

16 Q But without knowing what demand is, you don't know whether
17 or not there is actually going to be any actual sales; is that
18 correct?

19 A That is not correct. I think you can look at a
20 marketplace, and you can assume that other competitors are in
21 the marketplace because there is demand.

22 Q Okay. But without knowing for sure whether or not you are
23 going to be able to sell anything, you don't know if or when
24 this license agreement was going to be profitable for New
25 Sunshine?

1 A And that is why it is an investment, and there is a risk
2 involved with an investment.

3 Q And it has a significant risk without knowing what the
4 actual market would be?

5 A It is a risk.

6 Q Would you agree as the president and CFO of New Sunshine
7 that you had a fiduciary duty to make sure New Sunshine was
8 getting the best deal possible in this license agreement?

9 A I would.

10 Q But there is no real way of knowing what, without knowing
11 what the demand is going to be if you are going to be able to
12 get a good deal; is that correct?

13 A That's correct.

14 Q Now, there was also some questioning by Mr. Funk as far as
15 your early relationships with Mr. Hilbert and what you
16 considered to be his business acumen, his ethics, etc. You
17 were aware that during the time that you were involved in
18 Haverstick, Mr. Hilbert was involved with Haverstick, of the
19 issues related to Mr. Hilbert's departure from Conoco,
20 correct?

21 A I was.

22 Q And that Conoco ultimately had to foreclose on Mr.
23 Hilbert's house due to his questionable business practices; is
24 that correct?

25 A I was aware of the foreclosure of his home.

1 Q Okay. And then you testified that Steve Hilbert was
2 involved in reporting the financials to the equity fund; is
3 that correct?

4 A Yes.

5 Q And that the reporting was to, on behalf of the funds,
6 Steve Hilbert, Jim Adams, Rollie Dick, and Ronald Gerwig? Is
7 that what you said?

8 A Correct.

9 Q Now, going down the line to New Sunshine, there is the
10 board of managers that supposedly governed New Sunshine
11 separately. Who was on that board of managers?

12 A At the end on the board of managers would have been Mr.
13 Hilbert, Mrs. Hilbert, Mr. Adams, Mr. Dick, and myself.

14 Q So in essence, when New Sunshine is reporting the
15 financials to the fund, they are basically having the papers
16 in one hand and putting it in the other because it is the same
17 people that are involved; is that accurate?

18 A Correct.

19 Q Mr. Funk had asked you about the impetus of Melania Trump
20 as the licensor for the skincare product line. I think you
21 testified that New Sunshine actually sought out Melania Trump;
22 is that your testimony?

23 A I believe so.

24 Q Isn't it, in fact, Steve Hilbert was the one that actually
25 sought out Melania Trump for this license agreement?

1 A Can you repeat the question?

2 Q Sure. Instead of broadly stating that New Sunshine sought
3 out Melania Trump, didn't, in fact, Steve Hilbert go out and
4 seek out Melania Trump?

5 A I don't know the differentiation between the two. Steve
6 Hilbert is our CEO.

7 Q Sure. Nobody else from New Sunshine went out?

8 A Right, correct.

9 Q Okay. I am going to direct you then -- we look at
10 Exhibit 205, which was your employment agreement. And if you
11 look at page 14, there is a signature there from Steve
12 Hilbert, correct?

13 A Yes.

14 Q What are his titles on that signature block?

15 A Chairman and CEO.

16 Q What was he the chairman of?

17 A I believe he was the chairman of our board of managers of
18 New Sunshine.

19 Q Okay. So he was the CEO of New Sunshine as well as the
20 chairman of the board of managers of New Sunshine?

21 A I believe so.

22 Q Okay. And then if you will flip back to Exhibit 204 that
23 we looked at earlier, which was the third amended operating
24 agreement for New Sunshine. And looking to the very last page
25 of that, there is a listing of who the percentage, percentage

1 of ownership in New Sunshine; is that right?

2 A Yes.

3 Q And is Steve Hilbert listed on that page?

4 A Which page are we looking at again?

5 Q The very last page of this exhibit.

6 A Trump 00560?

7 Q Correct.

8 A Yes.

9 Q Is Steve Hilbert listed on that page?

10 A He is not.

11 Q Who is listed on that page?

12 A MH Investors Sun and MH Investors Gaming.

13 Q What are the percentage of ownership for both of those
14 policies?

15 A Ninety-nine percent for Sun and 1 percent for Gaming.

16 Q Okay. Then going on to some of the other license
17 agreements that we talked about, New Sunshine was involved in.
18 We had the JWOWW license agreement, correct?

19 A Yes.

20 Q And you said there was an initial financial analysis that
21 you did for that? Did you have actual data to base that
22 financial analysis on?

23 A On forecast?

24 Q Correct.

25 A I don't believe so.

1 Q Okay. There was no upfront royalty payment for JWOWW as
2 part of that license agreement now, was there?

3 A Correct.

4 Q Did Steve Hilbert get \$50,000 worth of free JWOWW product
5 in that license agreement?

6 A I don't believe so.

7 Q Was there any formula purchase rights to JWOWW as part of
8 that license agreement?

9 A I don't believe so.

10 Q Was there any clauses, provisions within that license
11 agreement dealing with change of ownership of New Sunshine?

12 A I don't believe so.

13 Q And, in fact, the JWOWW license agreement dealt with an
14 entirely different product line than what the Melania Marks
15 Skincare license agreement did?

16 A Correct.

17 Q And then the Kardashian license agreement we also talked
18 about.

19 A Yes.

20 Q And that was, you said, a \$1.2 million advanced royalty to
21 the Kardashians?

22 A Yes.

23 Q That was actually for all three of the Kardashian sisters;
24 is that correct?

25 A Correct.

1 Q That wasn't 1.2 million for each of them?

2 A Right.

3 Q It is roughly 400,000 per Kardashian sister?

4 A If you look at it that way.

5 Q Sure. And as part of that Kardashian license agreement,
6 did Steve Hilbert get \$50,000 worth of free Kardashian
7 products?

8 A He did not.

9 Q Were there any formula purchase rights for the Kardashians
10 in that license agreement?

11 A No.

12 Q Was there any change of ownership provisions with regard
13 to New Sunshine in that license agreement?

14 A Not that I am aware of.

15 Q And again, the Kardashian license agreement dealt with an
16 entirely different product line than the Melania Marks license
17 agreement?

18 A Correct.

19 Q I believe your testimony then also with regard to the
20 Melania Marks license agreement was that up until about March
21 1st when you were terminated, that the license agreement was
22 doing well for New Sunshine; is that accurate?

23 A For which product?

24 Q For the Melania Marks product.

25 A I testified that we were executing it.

1 Q Okay. Was it working out well for New Sunshine?

2 A We hadn't sold the product yet because the launch wasn't
3 until April.

4 Q As of March 1st, did you even have an agreement to put
5 this product in any stores?

6 A I believe we had a purchase order from Lord & Taylor.

7 Q You think there was a purchase order as of March 1st?

8 A I can't recall, but I believe there was one in process.

9 Q If I told you that the purchase order wasn't until the end
10 of March?

11 A That could reasonably be, but I know there was one being
12 discussed.

13 Q Okay. How many sales of the product were there as of
14 March 1, 2013?

15 A There was zero because the product had not launched yet.

16 Q Talking about the board resolution with regard to the
17 Melania license agreement, you said there was no red flag to
18 you that they had asked for this. Were you aware leading up
19 to the signing of the license agreement and this board
20 resolution that Jonathan Gross had repeatedly asked for proof
21 ownership of New Sunshine by Steve Hilbert?

22 A I was.

23 Q And that was over the course of approximately nine-,
24 ten-month period, correct?

25 A Yes.

1 Q And then you testified that you found out about Steve
2 Hilbert's removal from New Sunshine in approximately the end
3 of November, early December of 2012?

4 A Yes.

5 Q That was after the license agreement had already been
6 signed?

7 A Yes.

8 Q And you said you continued to still go forward with the
9 license agreement at that point?

10 A Yes.

11 Q At any point after you learned of that in November,
12 December, did you communicate what you had learned to Melania
13 Marks Skincare?

14 A I did not.

15 Q And why not?

16 A I, I didn't think it was in my place to do so.

17 Q Do you know if Steve Hilbert ever communicated the issues
18 that were involved in that removal to Melania Marks Skincare?

19 A I do not.

20 Q You do not know?

21 A I do not know.

22 Q Okay. And then I believe your testimony was that Melania
23 Trump had brought value to this license agreement and that she
24 had some brand cache. Is that what your testimony was?

25 A Yes.

1 Q What sort of market analysis was done with regard to what
2 type of brand cache she actually had?

3 A Both consultants -- so we had Suzanne Pengally who was
4 able to work with QVC, had gotten confirmation that they would
5 put the product on television at some point.

6 Q "They" being?

7 A QVC.

8 Q Okay.

9 A And favorable feedback from them. We also engaged another
10 consultant, Nathan Judd, who talked to various buyers
11 throughout this period, who -- those buyers also appeared
12 favorable towards the line, the concept of the line.

13 Q So that was essentially more talking to different people
14 as far as whether or not they would agree to do, to sell these
15 products. But as far as determining what sort of actual
16 market there was and the correlation between Melania Trump's
17 name and what kind of cache that would bring to the skincare
18 products, there wasn't anything done with that regard?

19 A I am not sure there is information available to do that.

20 Q You didn't check Q scores?

21 A I believe we tried and did not get Q scores.

22 Q There is no Q score for Melania Trump?

23 A I don't believe so.

24 Q And then as far as the question from Mr. Funk with regard
25 to the projected profits for the 2013 fiscal year, I believe

1 Your Honor asked the question about the exclusion of the
2 royalty payment. And you said you felt that you were going to
3 be able to make that up; is that correct?

4 A Correct.

5 Q So you were assuming New Sunshine was going to have a
6 million dollars of revenue to offset that royalty payment?

7 A So, so what we did is, we had a budget that we prepared
8 for the bank, you know, a formal package. And that budget was
9 available to, to Menards and so forth. And that was probably
10 done in the August, September, October time frame. We put
11 that to bed, completed it. This was before we had the Melania
12 project completed. So given the uncertainty of whether it was
13 actually going to go forward or not, it was excluded, but we
14 had always operated under the assumption that year one would
15 be break even at best.

16 Q Okay. So you thought there would be a million dollars of
17 revenue within the first year?

18 A We did, in excess of a million dollars in the first year.

19 Q When did that next fiscal year start?

20 A November 1.

21 Q Of 2012?

22 A Yes.

23 Q You were still projecting a million dollars in revenue off
24 this product line, even though as of March there is still no
25 purchase orders and no stores to sell it in?

1 A Correct.

2 Q And then finally, with regard to some of the questioning
3 from Mr. Funk as far as the allegations in this complaint that
4 we looked at in Exhibit 200, as far as corporate waste, gross
5 management, you stated that you wouldn't have signed that
6 license agreement if you thought that was the case, correct?

7 A Correct.

8 Q But didn't you previously testify that other than
9 providing some financial input, you didn't actually know what
10 the terms were of the license agreement? You hadn't actually
11 read through it page by page?

12 A I had read it page by page.

13 Q You had read page by page? Okay. But you had no real
14 input on any of the terms other than financial, financial
15 aspect of their license agreement?

16 A I relied on counsel for any issues that I didn't
17 understand that were nonfinancially related.

18 Q So some of the terms were kind of outside the scope of
19 what you knew?

20 A That I would consider myself an expert on.

21 MR. PADGETT: Sure. That is all the further
22 questions I have. Thank you.

23 THE COURT: Thank you. Anything further, Mr. Funk?

24 MR. FUNK: No further questions, Your Honor.

25 THE COURT: Sir, your testimony concerning the

1 agreement with Ms. Marks being in the best interest of New
2 Sunshine.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: That was your view?

5 THE WITNESS: Yes.

6 THE COURT: So what did you think the purpose was of
7 the \$50,000 in free product to Mr. Hilbert?

8 THE WITNESS: I still get a little bit confused with
9 that whole clause because I believe it was, there was a
10 reciprocal clause in there for the Trump side as well, I
11 think. I am not sure.

12 THE COURT: What was he supposed to do with it?

13 THE WITNESS: He could use it to give out to market
14 the product, give it to friends. He was not allowed to resell
15 the product. So it was basically for giveaways to influence
16 buyers.

17 THE COURT: Okay. That is what you thought the
18 legitimate business purpose of it was?

19 THE WITNESS: Absolutely.

20 THE COURT: When you were in California on March the
21 1st, did you sign any agreements or documents on behalf of New
22 Sunshine?

23 THE WITNESS: I did not.

24 THE COURT: But you were negotiating on behalf of
25 New Sunshine?

1 THE WITNESS: No. What we were doing with the
2 Kardashians, for instance, is we had what was called a
3 licensee summit. So the Kardashian sisters have various
4 licenses, licensors, and we were called there to meet with the
5 sisters individually for 45-minute sessions.

6 And at the end of the day we were to get together with
7 the other licensors and collaborate on how we could cross-sell
8 with one another. But there was no additional binding of New
9 Sunshine, and, in fact, my purpose of being there was to give
10 them an update on how we were doing with respect to furthering
11 their product in retail outside of tanning salons.

12 THE COURT: Okay.

13 THE WITNESS: And the other meetings were just
14 prospecting.

15 THE COURT: And I missed the spelling. Where are
16 you working now?

17 THE WITNESS: DuraMark Technologies.

18 THE COURT: What is that?

19 THE WITNESS: It is, it is an early-stage business
20 with a technology solution.

21 THE COURT: And what is your job there?

22 THE WITNESS: CFO.

23 THE COURT: Very good. That is all I have.
24 Follow-up, Mr. Padgett?

25 MR. PADGETT: Just briefly. One?

1 THE COURT: Yes.

2 **FURTHER REDIRECT EXAMINATION**

3 BY MR. PADGETT:

4 Q Mr. Weber, you just responded in response to Your Honor's
5 question about the \$50,000 to Steve Hilbert. Your
6 understanding is that he was going to hand it out to friends
7 to kind of further the product. In essence, isn't he flooding
8 the market and killing off any potential buyers by giving away
9 \$50,000 worth of this product when those people should,
10 instead, be buying the product from New Sunshine or from
11 whoever the stores are?

12 A I would say it is very common for companies to sample the
13 product, and \$50,000 over a product that is projected to sell
14 a million dollars is relatively de minimus.

15 Q Those weren't actual sample bottles that were being
16 theoretically given out -- they were full-size bottles?

17 A Yes.

18 MR. PADGETT: Okay. That is all the questions I
19 have.

20 THE COURT: Thank you. Mr. Funk?

21 MR. FUNK: No, Your Honor.

22 THE COURT: Thank you. We will take a recess right
23 now for about ten minutes. Thank you, sir, you can step down.

24 THE WITNESS: Thank you.

25 THE COURT: I did have one more question. Sorry.

SCOTT MATTHEWS - DIRECT/TYRA

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1 Jean, are you still on?

2 THE COURT REPORTER: Yes.

3 THE COURT: Are you involved in any litigation with
4 New Sunshine?

5 THE WITNESS: I am not.

6 THE COURT: Okay. Thank you. Ever were?

7 THE WITNESS: No.

8 THE COURT: Okay. Thank you.

9 (Witness excused.)

10 (Brief recess, 11:01 a.m.)

11 AFTER RECESS

12 **SCOTT MATTHEWS, PLAINTIFFS' WITNESS, SWORN**

13 **DIRECT EXAMINATION**

14 THE COURT: Could you state your name, please?

15 THE WITNESS: Scott Matthews.

16 THE COURT: Thank you. Go ahead, please.

17 BY MR. TYRA:

18 Q Mr. Matthews, are you currently employed?

19 A No.

20 Q Where were you last employed?

21 A New Sunshine, LLC.

22 Q And what was your position there?

23 A General counsel and senior vice president of corporate
24 development.

25 Q When did that employment terminate?

1 A March 1, 2013.

2 Q And that was when new management from Merchant Capital
3 notified you that your employment was terminated?

4 A Yes.

5 Q When did you receive your law degree?

6 A 1998.

7 Q And were you licensed to practice law starting in that
8 year?

9 A Yes.

10 Q And briefly, where were you employed before New Sunshine?

11 A I worked at Ice Miller for eight years prior to New
12 Sunshine.

13 Q Okay. When did your employment with New Sunshine begin?

14 A November of 2008.

15 Q And what was your first job title there?

16 A General counsel.

17 Q And then you acquired the other title thereafter?

18 A Yes.

19 Q And when was that?

20 A Well, between my last title and my first title in 2010,
21 August 2010, I was promoted to hold the additional title of
22 executive director of branding.

23 Q And what were your job responsibilities at New Sunshine as
24 of 2011 and 2012?

25 A My responsibilities were all the, the general counsel work

1 as far as maintaining a portfolio, trademark portfolio, doing
2 contracts, doing the corporate governance, 401K benefit-type
3 plans. In addition to that, I was in charge of the marketing
4 department, which created about 60 new products a year. I
5 supervised that department, managed it, was responsible for
6 the product development and also for identifying new business
7 opportunities and revenue streams for the company.

8 Q And New Sunshine had various subsidiaries, LLCs,
9 Australian Gold, and others, correct?

10 A Yes.

11 Q Okay. And your responsibilities, you might say, were New
12 Sunshine and downstream, the subsidiaries of New Sunshine but
13 not the business entities above New Sunshine; would that be
14 fair to say?

15 A That is correct.

16 Q So when we talk about MH Investment Sun and the MH Equity
17 Fund and entities like that that could be above New Sunshine,
18 that wasn't part of your responsibilities, correct?

19 A That is correct.

20 Q Okay. And to whom did you report?

21 A Eric Weber.

22 Q And his title was?

23 A President.

24 Q When did Eric Weber become president of New Sunshine?

25 A I believe it was September of 2011.

1 Q Who was the CEO of New Sunshine throughout 2011 and 2012?

2 A Steve Hilbert.

3 Q Okay. And Eric Weber, as president, followed the
4 directions of Steve Hilbert as the CEO, correct?

5 A You would have to ask Eric what he followed. I reported
6 to Eric.

7 Q Okay, okay. And your office was in the MH Equity suite
8 which is located next to the New Sunshine suite in the same
9 building on Corporate Drive in Indianapolis?

10 A My last office. My first office wasn't.

11 Q And so how long were you in the office over at MH Equity?

12 A About two years.

13 Q That was next to Steve Hilbert's office?

14 A No. It was on the same side of the building. It wasn't
15 next to Steve's.

16 Q All right. Now, what we have marked as Exhibit 12 in the
17 binders, I will ask you to look at Exhibit 12. Do you
18 recognize the license agreement that was signed on November 1,
19 2012?

20 THE COURT: Excuse me one second. Do you know that
21 we are out again? Thanks. Go ahead.

22 BY MR. TYRA:

23 Q Mr. Matthews, you have had a moment to look at Exhibit 12,
24 correct?

25 A Yes.

1 Q You recognize that?

2 A Yes.

3 Q Were you involved in negotiating this license agreement?

4 A Yes.

5 Q Okay. In fact, you were the lead negotiator for New
6 Sunshine in this deal?

7 A Correct, yes.

8 Q Okay. And the negotiations ran from about mid-2011 until
9 the license agreement was signed on November 1, 2012, correct?

10 A Yes.

11 Q And the lead negotiator for Melania Marks was an attorney
12 with The Trump Organization by the name of Jonathan Gross,
13 correct?

14 A Yes.

15 Q To your knowledge, was any financial analysis conducted by
16 or on behalf of New Sunshine projecting how the Melania
17 product line would do from a financial standpoint other than
18 by Eric Weber?

19 A No.

20 Q All right. Now, there is some reference to a hero. The
21 hero of this product line was caviar, correct?

22 A Yes.

23 Q And why don't you explain what a hero is in this context.

24 A It is a key ingredient that was used to market the product
25 and differentiate it from other products on the market.

1 Q In effect, it is what catches the customer's attention;
2 would that be fair to say?

3 A That is fair.

4 Q So the idea is that you promote the caviar ingredient is
5 something perhaps prestigious to attract attention to the
6 product line?

7 A That would be one of the benefits to promote it but not
8 the only one.

9 Q Okay. And New Sunshine and its consultant, Suzanne
10 Pengally, developed the idea of a product line including
11 caviar which the company pitched to Melania Trump, correct?

12 A That is correct.

13 Q Okay. And throughout almost all of 2012, during the
14 negotiations, Jonathan Gross wanted documentation from New
15 Sunshine regarding the ownership and control of New Sunshine,
16 correct?

17 A I don't know if it was throughout all. At some point he
18 wanted to understand the ownership structure, yes.

19 Q Now, let me show you. This is Exhibit 27, but I am also
20 going to put it on the screen here.

21 This is the second page of Exhibit 27. We see here in
22 Mr. Gross' e-mail that is towards the top there, January 18th.
23 "Following up on our conversation from the end of last week,
24 can you please provide an ETA on the organizational documents
25 and budget you are going to provide so that I can

1 appropriately revise the draft. The .org docs should include
2 those showing Steve's and his wife's ultimate beneficial
3 ownership and controlling interest so that I can understand
4 what the transfer and ownership/control covenants should
5 properly provide."

6 First of all, do you remember this e-mail exchange in
7 January 2012?

8 A Not this one specifically, no.

9 Q Then we go to the first page of Exhibit 27. You responded
10 on January 18th:

11 "As I mentioned, Steve and Tomisue have a financial
12 interest in the fund, and the other owner is John Menard."

13 And that is right in there (indicating). Even if you
14 don't remember this e-mail exchange, do you remember
15 communicating to Mr. Gross that information?

16 A Yes.

17 Q But you didn't explicitly say that Mr. Hilbert exercised
18 exclusive control of New Sunshine, correct?

19 A I didn't really use the word exclusive, but I said that
20 Steve and Tomisue Hilbert were managers and had control of New
21 Sunshine. I said as for control of New Sunshine, Steve and
22 Tomisue are both managers, and Steve is the CEO.

23 Q Okay.

24 A But I didn't use the word exclusive, no.

25 Q All right. So as far back as January 18, 2012, you had

1 put Mr. Gross on notice that there were other ownership
2 interests in New Sunshine, specifically Mr. Menard, correct?

3 A Yes.

4 Q Okay. And Mr. Gross' response towards the top of the
5 first page of Exhibit 27 was, "I am not sure ultimately how
6 this issue will be handled, but to the extent needed, I will
7 tentatively placemark so as not to hold up the draft, which I
8 should get to you next week." Correct?

9 A Yes.

10 Q Ownership and control of New Sunshine continued to be an
11 issue for Mr. Gross all the way from January 2012 up to the
12 point at which the license agreement was signed, correct?

13 A He had asked me for additional documents and understanding
14 of the ownership structure, yes.

15 Q Then if you go in the other binder to Exhibit 229, and
16 what we see in 229 is an e-mail of March 2, 2012, where you
17 had forwarded from -- it is my understanding Teresa Graham was
18 your paralegal at the time; is that correct?

19 A Yes.

20 Q That you sent the New Sunshine operating agreements to
21 Cathy Glosser at The Trump Organization, and then she
22 apparently forwarded them to Jonathan Gross; is that what you
23 see there?

24 A No. Mrs. Graham sent the operating agreements to Jonathan
25 Gross per my request.

1 Q Okay.

2 A And then it looks like I went ahead and copied Cathy
3 Glosser, forwarded that e-mail to Cathy so she would have it
4 as well.

5 Q Okay. Do you believe the New Sunshine operating
6 agreements would put the issue to rest regarding the Hilbert's
7 ultimate ownership and control of New Sunshine?

8 A You know, we weren't contracting above New Sunshine, and I
9 thought this would satisfy him to see these operating
10 agreements. And I thought that is what he was ultimately
11 looking for, yes.

12 Q And there were, as it says here in the attachment list,
13 there were various amended and restated operating agreements
14 for New Sunshine, correct?

15 A Yes, over the course of time they had been amended.

16 Q And had you read the operating agreements back in 2012?
17 Were you familiar with them?

18 A Yes.

19 Q Okay. And what provisions would prove, just looking at
20 the operating agreements, that would prove that Mr. Hilbert
21 had ownership and control of New Sunshine?

22 A I can't recall.

23 Q Okay. And in particular, let me refer you to -- and this
24 is on Exhibit 8. And this is the last page of Exhibit 8, if
25 you would like to take a look at that. And when we look at

1 what I understand to be the last restated amended operating
2 agreement for New Sunshine, this is what was attached at the
3 end of that operating agreement. And it says basically these
4 are the owners of New Sunshine?

5 A Yes.

6 Q So that is what you had sent to Mr. Gross?

7 A Well, I also sent to Mr. Gross after he saw that the
8 operating agreements for MH Investors Sun and MH Investors
9 Gaming.

10 Q Okay. And would those operating agreements have indicated
11 Steve and/or Tomisue Hilbert have the ultimate ownership of
12 those entities?

13 A I don't recall, but he didn't ask for any additional
14 information further up the chain.

15 Q Okay. Now looking at the Exhibit 21, please -- and
16 specifically, it is page 14 of Exhibit 21, Footnote 3. And
17 you will see at the very top of where I have got it on the
18 screen. Right at the top there is a Footnote 3 after control
19 of MHIS and MHIG, and your understanding, as we are going
20 through this whole process is that MH Investors Sun and MH
21 Investors Gaming, correct, that is what those initials meant?

22 A Yes.

23 Q And then we have got the footnote to Paragraph Roman
24 numeral XXXV where Mr. Gross posed the question inquiring
25 whether Mr. Hilbert owned 100 percent of the equity interest

1 in New Sunshine, correct?

2 A Yes.

3 Q And this is after you had already identified MH Investors
4 Sun and MH Investors Gaming as the company levels immediately
5 above New Sunshine, correct?

6 A Yes.

7 Q And so was it your understanding at this point going back
8 and forth over an extended period of time with Mr. Gross that
9 Mr. Gross at that point on August 3, 2012 was trying to find
10 out who was behind MH Investors Sun and MH Investors Gaming?

11 A Yes.

12 Q And as you testified in your deposition, it was your
13 understanding that Mr. Gross was, to use your words, slanted
14 toward his concern for protecting Melania and the Steve and
15 Tomisue relationship; does that sound right?

16 A In the context of this, Mr. Gross was very vigilant in
17 trying to protect Melania, and there was a relationship with
18 Steve and Tomisue. And that was very important to this deal.
19 Without that relationship there would be -- Melania would
20 probably not have chosen an Indianapolis company to do her
21 product line, at least initially.

22 Q All right. Now looking at Exhibit 18, please, this is an
23 e-mail between you or an exchange of e-mails between you and
24 Mr. Hilbert on August 6 to 7, 2012. And Mr. Hilbert had
25 indicated that -- sorry, specifically on ownership, "this is a

1 bit dicey with everything, as you know, that is going on."

2 With everything, as you know, that is going on. What was your
3 understanding of everything that is going on at that point in
4 August?

5 A I, I knew that Mr. Hilbert and Mr. Menard were in a
6 dispute generally from Mr. Hilbert, but he did not reveal any
7 details of that dispute, just that he and John were feuding.

8 Q All right. And then also on this same thing, right, well
9 actually, just above where I had -- let me try this again.
10 There and there, just below that Mr. Hilbert went on to state,
11 "I don't feel good about trying to BS her." And "her," as you
12 understand it, was Melania Trump, correct?

13 A That is how I read that, yes.

14 Q Okay. Do you know what he meant by, he didn't feel good
15 about trying to BS Melania?

16 A No, not specifically.

17 Q Okay. And then in your response, and your response, I, I
18 can scroll this down here a bit and -- oops. And then your
19 response on the next day on the 7th was, you know, that is why
20 I brought it up. "Makes me nervous," and what did you mean by
21 saying "it makes me nervous"?

22 A You know, I couldn't remember. There were two things
23 going on, and I think after you showed me the previous
24 contract, I remember now. I thought that comment could have
25 been in reference to getting all the products, the components

1 ordered, the packaging. We needed to have that to New York
2 for the Celebrity Apprentice by mid-October. We really wanted
3 to get the contract done before committing to a purchase order
4 for products. I think after you showed me that footnote in
5 the last exhibit, what I really was talking about was Jonathan
6 wanted some kind of representation.

7 Steve owned 100 percent equity interest. I didn't
8 understand the equity structure. I just knew Steve and John
9 each had some equity in these companies. I didn't understand
10 the percentages, so I didn't want anything to be in the
11 contract that I knew wasn't correct.

12 Q Okay, okay. All right. And now, we then look at
13 Exhibit 235, and I believe Mr. Matthews, you had said a few
14 minutes ago that also the MH Investors Sun and MH Investors
15 Gaming operating agreements were forwarded along. And it does
16 look like on or about September 12th, in Exhibit 235, they
17 were, correct?

18 A I am at the wrong exhibit. Bear with me, please. Yes.

19 Q All right. Why was Mr. Gross still asking for
20 organizational documents on September 7th -- or September 12th
21 after you already had provided operating agreements in March?
22 Why was he still asking about that as you understand it?

23 A He wanted the -- when he saw the operating agreements from
24 New Sunshine, he saw MH Gaming and Sun, and he asked for
25 those. And I had to call outside counsel to get them because

1 I had never seen them before.

2 Q Okay. And then when we look at Exhibit 28, we are looking
3 at Exhibit 28 now, and on September 12th, September 13th he is
4 still asking for the organizational documents. And
5 specifically, this is the third page of Exhibit 28. Look in
6 the middle here. It says, "this documentation is necessary to
7 confirm New Sunshine structure and management, how to draft
8 certain provisions that may depend on that information."

9 That is why the operating agreement was recent on
10 September 13. Jonathan was still on this issue of who owns
11 and controls the company, correct, at that point in September?

12 A That is what he said.

13 Q Now turning to Exhibit 19, we have the draft license
14 agreement that when we look at the top left corner of the
15 draft, it refers to 10/4/12. So as far as you know, this
16 would be the draft that was created on or about October 4,
17 2012; does that sound right?

18 A It appears to be, yes.

19 Q Turning to page 14.

20 A Okay.

21 Q We have got Paragraph Roman numeral XXXV, and language was
22 stricken saying that, "during the initial term the Hilberts
23 shall have sole operational and management control of MHIS and
24 MHIG." You see that near the bottom of the page?

25 A Yes.

1 Q You remember how that provision was at one point inserted
2 in the draft and then why it was stricken?

3 A Not specifically other than Mr. Gross wanted that
4 provision in the agreement. I don't know if it made the final
5 draft or not.

6 Q And then in the same exhibit, page 15, Paragraph Roman
7 numeral XXXVII, it specifies that Eric Weber is the approved
8 business manager under Steve Hilbert's direction. You see
9 that?

10 A Yes.

11 Q Jonathan Gross had included that provision, but you don't
12 know why.

13 A I have no idea why Jonathan did a lot of things. This
14 provision didn't make it in the final signed draft.

15 Q Okay, okay. And then when we look at Paragraph C in the
16 same exhibit on page 26.

17 A Yes.

18 Q The provision regarding what happens if Steve Hilbert is
19 no longer in control has been stricken. Then do you know why?
20 First of all, do you know who struck it?

21 A I don't remember. This is, these were just, like I say,
22 there were probably ten drafts of this contract, and it was
23 heavily negotiated on various parts. So just over the various
24 iterations, things came and went.

25 Q And do you know why this provision was stricken?

1 A I, I can't remember right now, or that context, no, sir.

2 Q Okay. And then similarly, and we are looking at page 32
3 of the same exhibit, then the provision regarding what happens
4 if Steve Hilbert is no longer in control has also been
5 stricken, but you don't know who struck it or why?

6 A And actually this reminds me because the additional draft
7 language put in this draft provided for a change of control.
8 So things about change of control and Steve were stricken
9 because the agreement prior to this didn't allow for a change
10 of control. Now, this draft was proposing that a change of
11 control be allowed under certain circumstances.

12 Q You recall ultimately the license agreement does have a
13 provision about what Melania Marks can do if Steve Hilbert is
14 no longer in control of the company?

15 A That is correct. I think this was probably the first
16 draft proposing something like that.

17 Q There is a special remedy for Melania Marks if Steve
18 Hilbert is no longer in control?

19 A I wouldn't call it a remedy, no, sir.

20 Q How would you describe it?

21 A There is a provision regarding what happens if Steve
22 Hilbert is no longer in control.

23 Q Okay. And essentially it is that New Sunshine hands over
24 the product line to Melania Marks for \$1 million?

25 A No, I disagree with that.

1 Q Okay. Well, go ahead and clarify that.

2 A They hand over the formula, the recipe. That doesn't
3 include the product line, is a far thing from a product line.

4 Q Okay, okay. And by the way, that is a formula in the
5 negotiations. New Sunshine would be spending about \$2 million
6 to develop that formula, correct?

7 A That number was put in there, to be honest, by Jonathan,
8 because he wanted to have a commitment. We hadn't spent that
9 much money to develop it.

10 Q Okay, okay. Now from your deposition testimony it sounded
11 like, would it be fair to say that you have fairly little
12 recollection of what happened on the day the license agreement
13 was signed? Let me rephrase that.

14 A That, that is, I, I guess concerning what facts? That
15 is -- I don't understand.

16 Q Well, first of all, you recall that you, Steve, and
17 Tomisue Hilbert, Angie Provo, and Eric Weber were in New York
18 City for a filming of a Celebrity Apprentice spot, correct?

19 A That's correct.

20 Q And your recollection is consistent with the date on the
21 license agreement of November 1, 2012, correct?

22 A I was in New York on that day, yes, sir.

23 Q Okay. And if you look at Exhibit 241.

24 A Yes.

25 Q You recall what has been marked as Exhibit 241? That was

1 an e-mail --

2 THE COURT REPORTER: I'm sorry, could you repeat
3 your question?

4 BY MR. TYRA:

5 Q You recall in Exhibit 241 sending an e-mail to Jim Adams
6 and Rollie Dick for them to sign the board resolution,
7 according to this, at 3:37 p.m. on November 1st, correct?

8 A Yes.

9 Q Okay. Now, would there have been any reason that New
10 Sunshine could not have disclosed the Melania Marks
11 negotiations to Merchant Capital?

12 A No.

13 MR. TYRA: Okay. I have no further questions.
14 Thank you.

15 THE COURT: Cross?

16 MR. FUNK: Thank you.

17 **CROSS EXAMINATION**

18 BY MR. FUNK:

19 Q Mr. Matthews, I would like to ask you first some limited
20 questions, sir, on your background before we go into this
21 transaction. You are a graduate of the Indiana University
22 Robert McKinney School of Law?

23 A I am. Yes, sir, I am.

24 Q Here in Indianapolis?

25 A Here in Indianapolis, yes, sir.

1 Q What year did you graduate?

2 A 1998.

3 Q Did you receive any honors in law school?

4 A I graduated summa cum laude, third in my class, was a
5 member of Law Review and Moot Court.

6 Q You mentioned in direct examination that you practiced at
7 Ice Miller?

8 A Yes.

9 Q Correct? Where did you begin your private practice
10 career?

11 A I started in 1998 with Leagre Chandler & Millard and
12 practiced there for a couple of years.

13 Q What kind of work did you do at the Leagre Chandler &
14 Millard firm?

15 A Complex business litigation, litigating contracts and
16 disputes very similar to this.

17 Q How long did you practice at that firm?

18 A I was there for two years before joining Ice Miller.

19 Q Why did you leave the Leagre Chandler & Millard firm?

20 A That firm was undergoing some changes, and I sensed it
21 would be best to get out before I was, there was no longer a
22 firm.

23 Q And then you joined Ice Miller when?

24 A In June of 2000.

25 Q And practiced there how long?

1 A Practiced there until I went in-house at New Sunshine in
2 2008.

3 Q What work did you do at Ice Miller?

4 A Again, commercial litigation. This time I did a lot more
5 covenants not to compete, trade secrets, some IP litigation,
6 and tried several, several preliminary injunction hearings and
7 a couple of federal court trials while there.

8 Q And during your career at Ice Miller, did you do work for
9 New Sunshine?

10 A Yes.

11 Q And how long?

12 A Basically, from the beginning in 2000 I started doing work
13 for New Sunshine which wasn't New Sunshine back then but the
14 predecessor owners.

15 Q And did that work as outside counsel enable you to learn
16 its business?

17 A Absolutely.

18 Q Not just as legal affairs but the business itself?

19 A Yes, sir. I was responsible for drafting their
20 distributor contract, which is a pretty -- among others at Ice
21 Miller but was involved in drafting it and revising it over
22 several years until I got in-house and learned their policies
23 on where they want their product sold and how they are
24 distributed and learned their sales force and executive team.
25 So I really had a good understanding of the business after

1 working for them for eight years.

2 Q Then you went in-house with New Sunshine in what year?

3 A November of 2008.

4 Q Did you believe at that time, based on the work that you
5 had done for New Sunshine at Ice Miller, that New Sunshine was
6 a company of sufficient size and complexity to be able to
7 justify in-house counsel?

8 A Oh, absolutely. My -- the savings we generated on
9 managing the trademark portfolio paid for my salary.

10 Q Saving outside legal expenses?

11 A Yes, sir.

12 Q Okay. During your years as general counsel and vice
13 president at New Sunshine, were you involved in the
14 negotiation of license agreements other than the one with
15 Melania Marks Skincare?

16 A I was.

17 Q Were you involved in the negotiation of any celebrity
18 license agreements at New Sunshine before becoming the lead
19 negotiator in the Melania Marks transaction?

20 A I was.

21 Q Were you the lead negotiator in the Farley license
22 agreement?

23 A Yes.

24 Q Were you the lead negotiator in the Kardashian license
25 agreement?

1 A Yes.

2 Q Were you the lead negotiator in any other celebrity
3 license agreements for New Sunshine?

4 A I had negotiations with Snooki, also of Jersey Shore fame
5 with her representatives, but we ultimately decided not to do
6 that deal.

7 Q In addition to the celebrity license agreements that you
8 negotiated on behalf of New Sunshine as its lead negotiator,
9 did you negotiate any other license agreements before becoming
10 involved in the Melania Marks negotiations?

11 A I don't remember.

12 Q Did you negotiate other contracts?

13 A Yes, sir.

14 Q Was negotiating New Sunshine deals part of the regular
15 fare of your job as general counsel?

16 A I would say that is something that when we were
17 negotiating deals, I was involved in them in some level, yes.

18 Q Some of those as the lead negotiator?

19 A Yes.

20 Q Were you the lead negotiator for New Sunshine in the
21 transaction with Melania Marks?

22 A Yes.

23 Q Okay. Did you consider yourself to be by the time that
24 agreement was signed on November 1, 2012, a sophisticated
25 business person and lawyer in the matter of negotiating

1 license agreements?

2 A Yes.

3 Q I want to turn next to a subject that we have heard some
4 from Eric Weber about, and that was New Sunshine's venture
5 into the beauty skin product line. Do you recall when New
6 Sunshine started those efforts?

7 A Yes. My recollection is really, it went before I was even
8 at the company. They had looked under prior executive
9 leadership about hiring a consultant to find a general manager
10 to do beauty line.

11 Australian Gold had dabbled in it in the mid-2000s,
12 and it was always a part of the corporate strategy to
13 diversify not only product channels but product types. And
14 beauty was an identified target ever since I can remember
15 being with the company. And in the year 2011, we became
16 really serious about, we need to get there and get there fast.

17 Q Why?

18 A Because the tanning industry was under heavy attack by the
19 FDA, by state regulations and laws that are banning, under
20 tanning and 18 years old. Ten years ago there was about
21 25,000 tanning salons; today, maybe there is ten or 12. So it
22 is really a contracting market, and what you are seeing is
23 flat revenue and declining revenue and declining sales. And
24 to maintain the company that we were, we knew that we need to
25 find new products and new channels of distribution.

1 Q Was New Sunshine engaged in both the tanning salon
2 business and in the tanning lotions business?

3 A New Sunshine used to sell tanning beds. We divested that
4 in 2010 and sold the tanning bed business off in three
5 separate transactions which I did, and so we just were selling
6 tanning lotions and tanning bulbs as of I think late 2010.

7 Q The sense by the company was that it needed and wanted to
8 broaden its product line?

9 A Right. ETS was a tanning bed division. We lost that, so
10 you are looking to replace that revenue and grow it with
11 something that has a better future and prospect.

12 Q What was your involvement then, Mr. Matthews, in moving
13 into the new area?

14 A You know, almost the project manager in the sense that not
15 only did I negotiate it, but I was really tasked even before
16 my title changed to really go out and find new revenue
17 streams, new product categories. I worked heavily with a
18 consultant we hired who was a beauty consultant.

19 Q Who was that?

20 A That was Suzanne Pengally, and she was a, really a QVC
21 expertise. Our original thought way before Melania was, let's
22 develop a skincare line and sell it on QVC. We had looked at
23 acquiring a company, Peter Thomas Roth in New York. They had
24 done very well marketing on QVC. We said, let's follow that
25 model. That is how this whole beauty skincare line really got

1 started.

2 Q How did Miss Pengally help you?

3 A She told us what QVC is looking for. She said, for
4 example, on the caviar. QVC doesn't have a caviar product, La
5 Prairie sells them for 350 a jar in high-end department
6 stores. We can still have that prestigious product that is
7 really going to do well in a QVC-type environment.

8 Q Did Miss Pengally make any recommendations to New Sunshine
9 in how it should get into this new business?

10 A Absolutely.

11 Q What do you recall those recommendations being?

12 A She gave us a lot of recommendations on product
13 development, on what the product needs to look like, the price
14 of the product, how to market the product, what our pitch to
15 QVC should look like, what to expect from the QVC buyer, the
16 percentage breakdown so we could kind of start making
17 projections of, does this make business sense.

18 Q Did you discuss with Miss Pengally any celebrity
19 spokesperson for this product line?

20 A We did. Initially we had hired Katie Stamm, who was
21 Miss America 2009, to work for us to do, you know, some vice
22 president brand awareness. She was supposed to be a brand
23 ambassador. Originally, we were going to have Katie Stamm
24 promote this line.

25 Q The line being the new beauty line?

1 A The new beauty line, and Miss Pengally told us after
2 several months of working, I think she was a little reluctant.
3 She finally said, you know, Katie is beautiful, but she is
4 just too young. We are selling to 40-year-old women,
5 50-year-old women, and you need somebody who is going to
6 relate to them better.

7 Q Did Miss Pengally have any recommendations?

8 A We, well, we had brought up the fact that, you know, what
9 about Melania Trump? And at that time Mrs. Trump had been
10 very successful with her jewelry line on QVC. It had sold
11 out. Suzanne said that was an excellent idea and thought that
12 was fantastic and got very excited about the project. And
13 after that meeting, my recollection is when Mr. Hilbert
14 reached out to Melania to see if she was interested.

15 Q With Miss Pengally's enthusiastic concurrence?

16 A Correct.

17 Q What do you recall about your first contact with Melania
18 Trump on this proposed skin line product?

19 A We went, we flew to New York. It was Steve, Angie Provo,
20 and myself.

21 Q Do you recall about when that was?

22 A It was sometime in 2011, and I don't know if it was fall.
23 I am guessing I think fall.

24 Q Why was Miss Provo included?

25 A Miss Provo was the, at that -- she is vice president of

1 marketing now, but she was the director of branding, and she
2 was responsible for developing this product and marketing it
3 under my supervision.

4 Q Did you meet with Mrs. Trump at that time?

5 A We did.

6 Q And when was that again?

7 A I believe it was in the fall of 2011. It could have been
8 summer.

9 Q Where did the three of you -- you, Mr. Hilbert, and
10 Miss Provo meet with Mrs. Trump?

11 A We met at Mrs. Trump's apartment in Manhattan.

12 Q And was anybody else there with her?

13 A I believe her assistant might have been there or in and
14 out. I don't remember.

15 Q What do you recall about that initial meeting with
16 Mrs. Trump?

17 A We talked about the products. We talked about the product
18 lineup, what the different types -- there were seven original
19 proposed products, what they would look like. Mrs. Trump went
20 upstairs to her bathroom, brought a tray down and said, "these
21 are products I have been working on."

22 She showed us a cream that she had made especially for
23 her. I think it was an exfoliator. She showed us the kind of
24 products she liked, the fragrances she liked. And actually
25 gave us her products to take back so we could go back with our

1 chemist and say this is what Mrs. Trump likes. We need to get
2 a day cream or a night cream or a serum that is similar to
3 this in consistency, fragrancy, whatever.

4 Q Was it your impression that Mrs. Trump was engaged from
5 the get-go on this product?

6 A She was very excited about this project and very
7 cooperative.

8 Q Did she strike you as being knowledgeable about the
9 substance of the creams and lotions that might be part of this
10 line?

11 A She was more involved and knowledgeable than any of the
12 other celebrity endorsements we had done at New Sunshine.

13 Q How did Mrs. Trump strike you at that initial meeting as a
14 potential representative to the public for this line of
15 products?

16 A I think she embodied what everyone wants to look like when
17 they are in their early 40s. She is beautiful, graceful, has
18 exquisite taste. I thought this was a good fit.

19 Q Was a tentative decision then reached on the New Sunshine
20 side to go forth?

21 A Yes.

22 Q And did you have the sense that Mrs. Trump wanted to do
23 the same?

24 A She did.

25 Q And then what happened, Mr. Matthews?

1 A There were various discussions. I wasn't involved in the,
2 you know, the big points of the contract, the royalty
3 percentage, the numbers. I had discussions with Steve, but I
4 believe Mr. Hilbert and Melania worked out the basic, basic
5 high, you know, high-level parameters of an agreement. And
6 then I may have had a phone call with Mr. Gross, who was a
7 Trump Organization's counsel. And at some point in time he
8 sent me a pretty comprehensive licensing agreement to look
9 over.

10 Q Was that the get-go then in the negotiating process?

11 A As far as actually doing the deal, and then we began the
12 dual track of now developing the product as well even though
13 we didn't have -- I expected the contract to be done in a
14 month. It turned out it was about over a year, but we
15 continued down the dual path of developing the product line as
16 well.

17 Q Did Mrs. Trump as well?

18 A Yes.

19 Q So there was a dual track. There was the Scott
20 Matthews/Jonathan Gross track of forging an agreement, and
21 then there was the New Sunshine/Melania Trump track of going
22 forth with their respective responsibilities?

23 A Right, which included the product development, selecting
24 the packaging, designing it, getting a PR firm in place,
25 trying to look at what a print campaign would look like and

1 appearances and all those things you need to do to launch.

2 Q Okay. Now my understanding is that there were many
3 iterations of the license agreement; is that correct?

4 A That is.

5 Q Back and forth between you and Mr. Gross?

6 A Right.

7 Q How did you find Mr. Gross, as Mrs. Trump's lawyer, to be
8 in the negotiations?

9 A I got the original contract. I was a little taken aback
10 how long it was and just seemed to have provisions that would
11 never come up in a million years. And I, I called Bob Hicks,
12 who is a managing partner over at Taft, who is our lawyer, and
13 had him do the first revision of the contract. We said, you
14 know, this guy is very, very detailed, unnecessarily so, we
15 thought, but we will try to live with this and not argue over
16 nonsubstantive provisions that he wanted to include.

17 Q And did you from time to time talk with Mr. Gross during
18 the negotiating process?

19 A Yes. Every revision really was a result of a telephone
20 call between me and Jonathan Gross, and he was really kind of
21 the master document keeper. He preferred to make these edits,
22 so we would call. So deletions and additions were the result
23 of many conversations we had back and forth.

24 Q How would you describe the negotiations?

25 A Very arm's length, much, much harder than I thought. I

1 honestly thought that it, it wouldn't be as, as long and
2 detailed. But it was very -- I would just say it is an
3 arm's-length transaction.

4 Q There has been discussion or testimony about either a
5 friendship or an acquaintanceship or whatever it was between
6 the Hilberts and the Trumps. From the standpoint of what your
7 work was in negotiating the deal for New Sunshine as the lead
8 negotiator, did any of that matter?

9 A It did not matter to me. I had an obligation to New
10 Sunshine to get a fair deal for New Sunshine and negotiate the
11 best contract we could.

12 Q And was it your sense that Mr. Gross was doing the same on
13 his side?

14 A He was.

15 Q Were these tough negotiations?

16 A They were. Mr. Gross was being what we here in the
17 Midwest probably call the typical New York lawyer as far as
18 doing that. They were tough negotiations, and I would get
19 frustrated with him and push back every time he pushed at me,
20 and we did what you ultimately do is get a compromise.

21 Q During that process, did Mr. Hilbert also push back
22 against things that Mr. Gross wanted?

23 A Absolutely.

24 Q Was it ever a situation in the negotiating process of this
25 license agreement that you felt Mr. Hilbert was giving in on

1 things because of this relationship with Mr. and Mrs. Trump?

2 A No, and that is not Steve's nature.

3 Q Did Mr. Hilbert have a financial interest in making sure
4 New Sunshine got the best deal possible?

5 A Absolutely, because my understanding was he owned
6 something ultimately of New Sunshine, so he wanted to see this
7 company grow. We wanted to grow this company and make a lot
8 of money.

9 Q That was your interest as well?

10 A Absolutely.

11 Q We know that the license agreement was signed on
12 November 1, 2012. Were you in New York at that time?

13 A Yes.

14 Q And you had traveled there with whom else from New
15 Sunshine?

16 A Steve and Tomisue Hilbert, Angie Provo, and Eric Weber.
17 And I forgot to mention, Katie Stamm was also with us on that
18 trip because she was appearing on the Australian Gold
19 Celebrity Apprentice, which was being shot immediately after
20 the Melania episode.

21 Q So even though Mrs. Trump had been kind of the replacement
22 person for Miss Stamm, New Sunshine had a continuing
23 relationship with Miss Stamm?

24 A That's right. We used her for other things.

25 Q Now why, why was Angie Provo part of this small group of

1 New Sunshine people in New York for the Celebrity Apprentice
2 show on November 1st?

3 A Angie actually appeared on air with Melania to promote the
4 product, and she, she judged the, the task.

5 Q As the negotiations transpired over this year or so, what
6 was Angie Provo's presence in the process?

7 A Angie Provo was the key person to putting this together,
8 you know. Melania never met Angie or myself prior to that
9 meeting, that first meeting at her apartment. And over the
10 course of time -- I, I was involved with Melania. And I
11 met -- Melania would call Angie. Angie had her cell phone
12 number. She was the one that would send her samples to
13 approve and get feedback and make the changes. She was the
14 one responsible for writing all the marketing copy.

15 I was involved too. She was the hands-on worker that
16 did everything from the product development, to she went with
17 me when we interviewed the PR firms to being on The
18 Apprentice, so she was key. And Melania and Angie developed a
19 pretty good working relationship over that time.

20 Q By the time the agreement was signed on November 1, 2012,
21 did you consider Angie Provo pretty much the lead person in
22 dealing with Melania Trump on this transaction?

23 A As far as getting the product developed and ready for
24 launch? Yes, sir.

25 Q Did they seem to have a good working relationship with one

1 another?

2 A Yes. I believe they trusted each other.

3 Q What was the Celebrity Apprentice show about that was shot
4 on November 1st?

5 A It was a task involving the product, the benefits of the
6 product, and Hurricane Sandy had happened. So we lost our
7 location, lost our filming crew. We were delayed. So the
8 task had changed. It was supposed to be a little bit
9 different. It turned out they had to create a display like
10 you would see in a retail store featuring the Melania product.

11 Q I am going to go through some of your e-mail
12 correspondence, Mr. Matthews, between yourself and, and
13 Jonathan Gross. But first I want -- I wanted to cover two
14 things with you.

15 The first is the e-mail exchanged between yourself and
16 Mr. Hilbert on August 7, 2012, in which Mr. Hilbert says, "on
17 ownership this is a bit dicey." And you respond, "that is why
18 I brought it up. Makes me nervous."

19 A Yes.

20 THE COURT: What exhibit is that again? Sorry.

21 THE WITNESS: Eighteen, I believe.

22 THE COURT: Okay.

23 BY MR. FUNK:

24 Q Did you at any time share this e-mail with Jonathan Gross,
25 Melania Trump, or anyone else from The Trump Organization who

1 may have been involved in negotiating the transaction?

2 A No.

3 Q This was an internal document between yourself and Mr.
4 Hilbert?

5 A Correct.

6 Q Did you at any time before November 1, 2012, know or
7 suspect that Steve Hilbert had been removed from any position
8 of authority to act on behalf of any company?

9 A No.

10 Q Had he ever disclosed to you these June 2012 letters from
11 James Anderson?

12 A I saw them, and he showed me a copy of the complaint in
13 November, late November 2012, first time I saw them.

14 Q Is that the complaint that was filed in the Wisconsin
15 litigation?

16 A That is correct.

17 Q Is that the first time also that you had any idea that Mr.
18 Hilbert had been removed from any position of authority of any
19 of the MH Private Equity Funds or any other related entities?

20 A That is correct.

21 Q Up to that time, up to late November of 2012, how had Mr.
22 Hilbert described to you whatever conflict there was between
23 himself and Mr. Menard?

24 A Excuse my French, but he said he was in a world-class
25 pissing match with John Menard.

1 Q Did he say anything beyond that?

2 A No.

3 Q Did it matter to you, Mr. Matthews, as counsel, general
4 counsel for New Sunshine and its lead negotiator what was
5 happening upstream from New Sunshine?

6 A No.

7 Q Why?

8 A New Sunshine was a standalone entity. Steve and John
9 could have their differences over whatever they want to have
10 differences over, their personal battles. I didn't have any
11 idea or thought that this would trickle down to New Sunshine,
12 and I didn't really know what was going on.

13 Q When Jonathan Gross is asking you for operating agreements
14 upstream from New Sunshine, did you even consider that request
15 to be relevant or germane?

16 A No, I didn't. That is what was frustrating to me was
17 listen, we signed a licensing deal with the Kardashians. I
18 negotiated four days. The money is even a little bit more
19 than Melania's, and here I am dealing 15 months with this guy
20 on a contract and he wants upstream operating agreements. I
21 thought this was ridiculous.

22 Q You didn't consider that to be necessary information?

23 A No. I just thought he was overlawyering the contract.

24 Q I am going to go through some exhibits now with you,
25 Mr. Matthews, that hopefully will help track negotiations for

1 the Court. Would you get the exhibit binder for the Defendant
2 in front of you? It starts with Exhibit 200.

3 A Yes.

4 Q Turn first to Exhibit 215, and before I keep digressing,
5 Mr. Matthews, before I ask you questions on that, let me go
6 back to this, the subject of your knowledge of whatever the
7 business dispute was between Mr. Hilbert and Mr. Menard. Did
8 you at any time before November 1, 2012, communicate in any
9 way to Jonathan Gross or anyone else on the Trump side of this
10 transaction, that you had some knowledge or information or
11 concern about the removal of Steve Hilbert?

12 A No. I didn't know about the removal or the alleged
13 removal.

14 Q And when Steve Hilbert told you, and pardon my French as
15 well, that "he was in a pissing contest with John Menard," did
16 you disclose that to anybody on the Trump side of the deal?

17 A No, I didn't disclose it to anyone outside of the room,
18 which was Eric Weber and myself.

19 Q All right. Now turning to Exhibit 215, this is an e-mail
20 of August 24, 2011, from yourself to Jonathan Gross; do you
21 see that?

22 A Yes, sir.

23 Q And you say, "I understand that you met with Melania
24 regarding New Sunshine's term sheet and Melania's new skincare
25 line." Does this date indicate to you that by now, by

1 August 24, 2011, the two parties were in discussions on the
2 deal?

3 A Yes, and so my prior statement about the fall had been
4 wrong. It must have been the summer of '11.

5 Q Fair enough. So did New Sunshine present a term sheet to
6 the Trump side?

7 A We probably did. I don't recall exactly what it looks
8 like, but I probably drafted it if we did.

9 Q And that would have been a precursor to a draft of a
10 license agreement itself?

11 A Correct. That is typically how we did these kind of
12 things.

13 Q Now turn next to Exhibit 216. In the second page, which
14 is Trump page 1567.

15 A Uh-huh.

16 Q Lower right-hand corner, do you see that?

17 A Yes.

18 Q That is an e-mail from you of November 22, 2011, still
19 almost a year before the agreement is signed. And you're
20 sending to Cathy Glosser and to Jonathan Gross a red line and
21 clean version of the licensing agreement; do you see that?

22 A Yes.

23 Q Does this indicate to you that by then, drafts of the
24 agreement were beginning?

25 A That is correct.

1 Q All right. Now would you turn next to Exhibit 217? This
2 is a financial analysis. Do you know who prepared that?

3 A I believe Eric Weber would have prepared that.

4 Q Concerning a projected sales and revenue on this project?

5 A This is an early draft. I think I was showed this at my
6 deposition if it is the same exhibit, but as I look at this
7 now, this shows a projected revenue for a QVC model which we

8 --

9 Q Ultimately rejected?

10 A -- ultimately abandoned, so it wouldn't be germane to
11 anything on --

12 Q All right. Now during the over-a-year negotiating of the
13 licensing agreement, did Eric Weber prepare multiple financial
14 analysis?

15 A Several.

16 Q What was the purpose of that?

17 A To analyze this as a business opportunity and a new
18 revenue stream for New Sunshine to see if on -- I think all
19 his projections were five-year models, to see if it would be
20 in the best interest to do the deal.

21 Q Speaking of five years, we know that the license agreement
22 that was ultimately signed had a five-year term initially and
23 then a five-year option term to be exercised by New Sunshine.
24 What did you think about the length of the term?

25 A I thought it was necessary in the sense that we are

1 starting a, a new line, and it may take a year just to get it
2 fully in all the department stores we want, year to 18 months.
3 And I didn't want to be -- you know, the Kardashian deal was
4 four years, but you didn't want to be almost halfway into a
5 contract and think we have to renegotiate in two years. So we
6 built that in because we were starting essentially a new
7 brand.

8 Q And so you thought a five-year initial term was
9 appropriate, given the new product line?

10 A Given the start-up time that it was going to take, we
11 thought that was appropriate, and Mr. Weber and Mr. Hilbert
12 agreed.

13 Q Would you turn next to Exhibit 218? The middle e-mail in
14 Exhibit 218 is an e-mail dated February 13, 2012, from you to
15 Jonathan Gross where you're proposing a call tomorrow to
16 discuss the contract and you will have a draft to him to
17 review; is that correct?

18 A Yes.

19 Q And again, does this e-mail memorialize the continuing
20 negotiating process?

21 A Yes.

22 Q I am finished with that exhibit. Exhibit 219. This is an
23 e-mail from yourself to Mr. -- excuse me, yes, from Mr.
24 Hilbert to you of February 29, 2012, when he says he thinks it
25 is important to have Melania meeting with Angie and that Angie

1 should be at the meeting. Do you see that?

2 A Yes.

3 Q Is this reflective of Angie Provo's importance in the
4 project?

5 A Yes.

6 Q So even back in February of 2012, Angie Provo was
7 considered by New Sunshine to be important in dealing with
8 Mrs. Trump?

9 A Yes. This was a meeting -- I was actually in Phoenix and
10 had to fly to New York and back to Phoenix for a meeting, for
11 some special meeting. I remember this because of the date,
12 and Angie Provo was not going to go. And she said, "you are
13 kidding me. You are going to make me go, aren't you? It is
14 going to happen" and jokingly, and then Melania had asked
15 Steve. So we had to get Angie a last-minute flight to go with
16 me to New York for these meetings.

17 Q So did you meet with Mrs. Trump at that time too?

18 A Yes. We had a meeting with Mrs. Trump that following day.

19 Q You and Angie Provo?

20 A Yes.

21 Q For what purpose?

22 A You know, I don't remember. I remember it because I was
23 on a massive travel schedule where I was flying all over the
24 country and literally had to fly out to Phoenix, fly back to
25 New York, and then fly right back to Phoenix for another

1 meeting. So that is why I remember it.

2 Q Turn next to Exhibit 220. The bottom of the first page of
3 Exhibit 20 is an e-mail from Jonathan Gross to you on March 2,
4 2012; do you see that?

5 A Yes.

6 Q And then he refers to things that had been discussed at a
7 recent meeting, and those are on the next several pages. Do
8 you see that?

9 A Yes.

10 Q Would this be reflective of the detail of the negotiations
11 between yourself and Jonathan Gross?

12 A Yes, and at this time it looks from looking at this, this
13 has a reference to Bob Hicks. Initially on I had used Taft on
14 some of the drafts. I don't remember how far they got
15 eventually. I took over, but Bob had been consulted on some
16 of this. I think this was a result of a pretty long meeting I
17 had with Jonathan at Trump Tower, and this was his list of
18 what we discussed in that meeting.

19 Q Turn next to Exhibit 223. This is an e-mail from yourself
20 to Cathy Glosser on July 21, 2012; do you see that?

21 A Yes.

22 Q And you state in this e-mail in part, quote, also Melania
23 will always have final say on pricing. So if she doesn't
24 agree, her vote will always veto ours; do you see that?

25 A Yes.

1 Q Why was it provided that Mrs. Trump would always have the
2 final say on the pricing?

3 A You know, it goes to the brand and what she is comfortable
4 with. She wanted this to be affordable for the modern woman I
5 think is how she has described it as some of the PR she had
6 done, and she wasn't comfortable trying to sell something at
7 \$200 plus. So, Melania had that control. Here Jonathan was
8 wanting to find prices. I said, "it is not necessary for the
9 contract, but they are really pushing for a price range."

10 Q And then you continue on in that paragraph by stating,
11 quote, we want to get a deal signed as soon as possible, but I
12 can't predict a price point for a product that isn't even
13 conceived, end quote, period. Would you explain that?

14 A Sure. The initial product line was seven products. We
15 had in the works additional products for additional launches
16 as the line grew. And so, the one was a caviar pad that you
17 would apply to the eyes. We hadn't even costed it yet, and so
18 there is no way to determine what we would sell it retail for.
19 I was showing my frustration with this is not something that
20 needs to be in the contract.

21 Q As of July 21st in that e-mail, were you of a mind frame
22 that you wanted to get the deal signed as soon as possible?

23 A Yes.

24 Q This wasn't a matter of The Trump Organization pressuring
25 New Sunshine to do a deal?

1 A No. We were, you know, in discussions with QVC. We were
2 trying to get time in the fall on QVC at still probably around
3 that time, I know we were looking for a September time frame.
4 So we really wanted to get, I mean, our original goal was to
5 launch this in September. At some point we realized we are
6 not doing QVC, we are going to do department stores, but
7 before we committed a million dollars in buying components and
8 ingredients to make this, so whatever it ended up being, we
9 would feel better with a contract.

10 Q All right. Turn next to Exhibit 232.

11 A Okay.

12 Q You told us earlier that Mr. Hilbert, on occasions, would
13 push back?

14 A Yes.

15 Q And not agree to things that the Trump side of the deal
16 were trying to get in the negotiations. Is this e-mail of
17 September 3, 2012, reflective of that?

18 A Mr. Hilbert said we will walk away from this deal and take
19 our product and market it under a different name or sell it a
20 different way if we can't.

21 Q If Jonathan Gross keeps pressing?

22 A Yes, sir.

23 Q Turn next to Exhibit 233. This is an e-mail September 5,
24 2012, from Jonathan Gross to Steve Hilbert and yourself
25 concerning change of control; do you see that?

1 A Yes.

2 Q Was that an ongoing issue in the case or in the
3 transaction?

4 A You know, I wouldn't say it is ongoing as much as the
5 things. I mean, I, I can't say.

6 Q Was it something from time to time that came up and was
7 addressed?

8 A Yes. That is fair to say.

9 Q And ultimately resolved?

10 A Correct.

11 Q To the satisfaction of both parties to the license
12 agreement?

13 A Yes.

14 Q Now turn next to Exhibit 234, and I am just about finished
15 with the exhibits. This is a, a letter to you from DKC
16 September 6, 2012. What is DKC?

17 A They are a New York-based public relations firm.

18 Q And what was its involvement going to be in this
19 transaction?

20 A It was pretty critical. They were going to be on a
21 monthly retainer, and they were responsible for getting
22 Melania's products mentioned in the beauty magazines, setting
23 up desk-side visits with the editors, scheduling television
24 show appearances. In the world of beauty, having a PR firm is
25 the most important thing you can do even above, like, print

1 advertising or other things.

2 Q Was an agreement entered into between New Sunshine and DKC
3 for this transaction?

4 A Yes, there was.

5 Q And after November 1, 2012, when the license agreement was
6 issued, did DKC do work as you described?

7 A Yes. In fact, we had a beauty editor event hosted in New
8 York City where some of the top beauty editors came, and DKC
9 was responsible for arranging the breakfast, sending out the
10 invitations, and putting together gift bags for these editors.

11 Q Was Mrs. Trump there?

12 A Mrs. Trump actually presented her line to these editors
13 and talked with them afterwards, yes, sir.

14 Q When would that have been?

15 A I think it was January of this year.

16 Q Again, after the license agreement was signed?

17 A Yes, it was sometime in the winter months.

18 Q After the license agreement was signed?

19 A Correct.

20 Q Turning next to Exhibit 237. It is a board of managers
21 agenda; do you see that?

22 A Yes, sir.

23 Q Did New Sunshine have a board of managers?

24 A Yes, it did.

25 Q And did it do work where it met and functioned?

1 A It met and functioned, yes, sir.

2 Q And on the October 9, 2012 agenda, on the second page of
3 the agenda, do you see an item called Celebrity Apprentice
4 update, Melania?

5 A Yes.

6 Q What did that mean?

7 A Just updating everyone on the status of the taping of the
8 show and logistics of what was going to happen. And this was
9 the thing where the board of New Sunshine was advised, just
10 given an update about all the ongoing business items.

11 Q Were these board agendas available to Merchant Capital and
12 MH Private equity fund?

13 A If they would have asked. They routinely called Mr. Weber
14 and asked for information. I know he gave it to them.

15 Q Was there any effort at any time during the years that you
16 worked for New Sunshine to conceal or withhold information
17 from either the fund or Merchant Capital?

18 A No.

19 Q Did New Sunshine, as far as you knew, operate as an open
20 book to both Merchant Capital and the fund?

21 A Yes.

22 Q Were all of New Sunshine's records available to Merchant
23 Capital and to the fund during that period of time?

24 A My understanding, they would be.

25 Q So the store was open?

1 A That is fair.

2 Q Now turn to Exhibit 239, and this is my next-to-last
3 exhibit that I will be asking you about. This is an e-mail of
4 October 25, 2012, from Jonathan Gross to you; do you see that?

5 A Yes.

6 Q Mr. Gross at that time says, in substance, quote, I have
7 no issue with Weber signing (as your voice mail says, maybe
8 you prefer), subject to the following New Sunshine's operating
9 agreement, so on, and so forth. Now, did you approve Eric
10 Weber signing the agreement?

11 A No, but the drafts had had Hilbert. They all came from
12 Jonathan Gross. Steve Hilbert didn't sign any contracts for
13 New Sunshine probably other than Eric's employment agreement,
14 so I was just cleaning that up.

15 Q Is that why Eric was substituted for Steve Hilbert as the
16 person to sign the agreement for New Sunshine?

17 A He was the most appropriate person. He or I signed -- I
18 mean, I signed the other two licensing deals, but he or I
19 would have been the ones that would sign these types of
20 agreements.

21 Q Was it Mr. Hilbert's practice to sign contracts for New
22 Sunshine?

23 A No.

24 Q Was Eric going to be part of the project going forward?

25 A Yes.

1 Q Now after the license agreement was signed on November 1,
2 2012, did you have any further involvement in moving the ball
3 down the field on the project?

4 A Yes.

5 Q What was your involvement?

6 A I had retained and met with and we had retained a broker
7 who had come recommended to us named Nathan Judd to help us
8 sell in department stores. I had met with Nathan several
9 times on this, got him familiar with the product. Angie Provo
10 was also involved with that because she was going to be going
11 with me.

12 Nathan shopped at the brokers. He had interest from
13 all the department stores. The key was finding a launch
14 partner who would put this on their shelves at the time The
15 Apprentice aired. Steve got a, what he thought and I think,
16 was an absolutely great deal to get an hour infomercial on
17 national TV for \$100,000. But that locked in our launch date,
18 and so we had defined it. Lord & Taylor was a department
19 store that I went to New York in I think January of this year
20 and met with the buyer there and Mr. Judd, and we got the
21 product sold into Lord & Taylor.

22 Q Now with Lord & Taylor -- it was an exclusive launch
23 partner?

24 A It was an exclusive launch with Lord & Taylor, and I know
25 at the time I was terminated there was meetings scheduled with

1 Macy's. I believe there was something in the works for
2 Dillard's and others, and again, Nathan had indicated they
3 would all take it. It was just who was going to do the
4 launch.

5 Q So with Lord & Taylor being the launch partner, did that
6 preempt other department stores from later becoming involved?

7 A No. You just needed to give them a short period of time
8 to be the exclusive launch partner. Ideally, the launch would
9 have had a public appearance by Melania, which I was trying to
10 plan and would have planned had we stayed and other events
11 surrounding it. I don't know if any of that ever happened.

12 Q When did your employment end with New Sunshine?

13 A March 1, 2013.

14 Q How did it end?

15 A I received an e-mail from Matt Cotton stating that due to
16 a company reorganization my employment was no longer needed.

17 Q Did you ever go back to New Sunshine after that?

18 A I went back that Monday to get my personal effects.

19 Q Did anybody from New Sunshine ever give you any other
20 explanation of why you had been terminated?

21 A No.

22 Q Have they ever?

23 A No.

24 Q Was it your best judgment based on your experience with
25 the New Sunshine business that the license agreement with

1 Melania Marks Skincare was in New Sunshine's best interest?

2 A I believed it was, yes.

3 Q Did you believe that it ultimately would have been
4 profitable for New Sunshine?

5 A We wouldn't have done it if it wouldn't have, if we didn't
6 think it would have been profitable.

7 Q Did you consider it to be a fair agreement?

8 A Yes.

9 Q Did you believe that it had provided reasonable incentives
10 for both of the contracting parties?

11 A Yes.

12 MR. FUNK: That is all I have on cross-examination,
13 Your Honor.

14 THE COURT: Thank you. Redirect?

15 **REDIRECT EXAMINATION**

16 BY MR. TYRA:

17 Q Just a few questions, Mr. Matthews.

18 A Okay.

19 Q Do you remember a meeting with investment bankers around
20 September or October of 2012 regarding the problem between
21 Mr. Menard and Mr. Hilbert?

22 A If there was a meeting I wasn't invited nor did I attend.

23 Q Okay. Now, you were saying that the New Sunshine books
24 would be open to Merchant Capital, but you had testified that
25 you are really not familiar with what goes on upstream of New

1 Sunshine.

2 A Right. Upstream meaning MH Equity, but as far as New
3 Sunshine, I know that the CFO of Menards, Inc. would call Eric
4 Weber asking all the time, hey, can you send me this report or
5 that report? And they always got it for them was my
6 understanding.

7 Q You indicated that initially, it looked like QVC was going
8 to be a very promising, shall we say, outlet or a conduit for
9 marketing a beauty line. But it ended up that Melania Trump
10 basically sank that idea. You just decided she did not want
11 to go the QVC route?

12 A No, that is not true. What happened is QVC typically used
13 to give people an hour. She got an hour to sell her jewelry.
14 QVC is in Philadelphia. QVC had changed the way they do
15 business. QVC said, Melania we will put you on in the fall of
16 2012, but we want you to come for one, eight-minute segment.
17 We want you to come four, five times a month.

18 If you look at the cost of having Melania go there,
19 sales just didn't quite justify it. We thought we are going
20 to be better off just going in to department stores, and at
21 that time, QVC wanted 53 percent of the gross sales and just
22 upped that, I believe, to 55 percent. So they were taking
23 another couple of points or wanted that, so we reevaluated it.

24 Q My point is that the proposal that QVC made, Melania Trump
25 said no. She just wasn't agreeable to the proposal that QVC

1 made?

2 A That is not fair. That was a joint decision. She may
3 have said that, but we said it too. We concurred.

4 Q Did you tell Melania Marks about Steve Hilbert's removal
5 after you found out about the suit in late November 2012?

6 A No.

7 Q Would it be fair to say, as general counsel, it would be
8 part of your duty to be aware of threats to corporate
9 ownership? I mean, if there is something where the ownership
10 of the company was at risk, would you be aware of that?

11 A If it was information which was in my knowledge and
12 control, I agree. This is a private business dispute. There
13 had been no lawsuit. I wouldn't, no.

14 Q And you mentioned at one point on cross-examination that
15 you thought that Mr. Gross was overlawyering the negotiations
16 of the license agreement, correct?

17 A Correct.

18 Q And in your, a little bit more colorfully, in your
19 deposition you said you thought he was being anal.

20 A Yes. I thought he would take 300 words and do what you
21 could do in 30.

22 Q The bottom line, one of the big things throughout the
23 negotiations for Mr. Gross was that he wanted proof of the
24 ultimate ownership and control of New Sunshine, correct?

25 A Yes.

1 MR. TYRA: Thank you.

2 THE COURT: Redirect? Recross?

3 MR. FUNK: Yes.

4 **RECROSS-EXAMINATION**

5 BY MR. FUNK:

6 Q And Mr. Matthews, did you believe that you had provided
7 Mr. Gross with that information that he had requested?

8 A With respect to the operating agreements? Yes.

9 Q Yes.

10 A Yes, sir.

11 Q Control and ownership?

12 A Yes, sir.

13 MR. FUNK: Thank you.

14 THE COURT: Anything further?

15 MR. TYRA: No, Your Honor.

16 THE COURT: Thank you. We will break for lunch. We
17 said 2:30? I will be back then. See you then.

18 THE CLERK: All rise.

19 (Lunch recess, 12:46 p.m. - 2:32 p.m.)

20 **AFTER RECESS**

21 **STEPHEN HILBERT, PLAINTIFFS' WITNESS, SWORDN**

22 **DIRECT EXAMINATION**

23 BY MR. TYRA:

24 Q Please state your full name.

25 A Stephen C. Hilbert, S-T-E-P-H-E-N, H-I-L-B-E-R-T.

1 Q Mr. Hilbert, to kind of get right into it just before we
2 got started, I showed you this diagram, which is Exhibit A to
3 a stipulation the parties had entered into about the business
4 structure immediately above New Sunshine, LLC. Does that look
5 pretty accurate to you?

6 A It, it appears to be. I mean, our, our legal did this
7 structure, but yes.

8 Q And, in fact, when you looked at the entire structure of
9 LLCs and other business entities under what we sometimes refer
10 to as the fund and Fund II, there are like 50-some business
11 entities overall. Would that be fair to say, approximately?

12 A I couldn't say accurately, but there were several, yes.

13 Q Okay. Now, throughout 2012, you were the chief executive
14 officer of New Sunshine, LLC, correct?

15 A That is accurate.

16 Q With you as operating CEO of New Sunshine, the president
17 of New Sunshine, Eric Weber, was under your guidance, correct?

18 A Well, Eric Weber was president of New Sunshine, and I was
19 the CEO. So he reported to me.

20 Q All right. And you exercised ultimate control over New
21 Sunshine throughout 2012, correct?

22 A That would be accurate.

23 Q However, you never owned the equity interest in New
24 Sunshine, correct?

25 A I owned a 20 percent interest in the fund, which in

1 essence, I had -- I had an absolute commitment to see New
2 Sunshine succeed, because that is how I was to have my
3 20 percent become valuable.

4 Q Okay. As to the specific question, you recall on page 157
5 of your deposition when we took your deposition a few weeks
6 ago -- I can show it to you.

7 MR. TYRA: If I may approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 BY MR. TYRA:

11 Q Lines 23 through 25, where you agreed with that
12 proposition.

13 A That is accurate.

14 THE COURT: Mr. Tyra, we are sharing that privately,
15 so I don't know what he just agreed to.

16 MR. TYRA: What I just showed Mr. Hilbert was on
17 page 157, lines 23 through 25.

18 "QUESTION: And would you agree that you never owned
19 the equity interest in New Sunshine?

20 "ANSWER: I would agree to that."

21 Yes. I apologize, Your Honor, since I do not have my
22 microphone with me. I am coming off the podium. All right.

23 BY MR. TYRA:

24 Q Now, you have had a relationship, whether we call it a
25 friendship or whatever, with the Trumps, starting with

1 Mr. Donald Trump going back to when you engineered a deal for
2 Conseco and Mr. Trump or his organization to buy the GM
3 building around 1998, correct?

4 A That is accurate.

5 Q Okay. Was it your understanding that several years before
6 New Sunshine first made a presentation to Melania Trump for a
7 beauty skincare line that Mrs. Trump had been working with
8 chemists to develop such a line of products?

9 A That is accurate.

10 Q And to use some of the language that is in the record
11 here, you were more than excited at the prospect of doing a
12 deal with Melania Trump, correct?

13 A I was more than excited about getting into the beauty
14 sector, and I thought that Melania would be a terrific
15 spokesperson and yes.

16 Q Okay. And then what I am referring to here, is in
17 Exhibit 33, and again, you can either look at the screen or if
18 you would like to look in the book there. On the first page
19 of Exhibit 33, we have an e-mail from you to Mrs. Trump, and
20 what I am referring to is near the bottom of the page where
21 you say that we are more than excited. That is what I am
22 referring to. You were excited about getting into the deal?

23 A Yes.

24 Q All right. And you were excited, as you referred to here,
25 at the prospect of maybe having a conference at the Trump

1 Tower, correct? At least you thought that would be a great
2 idea. Let's have the meeting at the Trump Tower, correct?

3 A Now, where are you pointing to?

4 Q It is where the arrow is. That line there where it says
5 my thought is, if Donald has a conference room, we can use
6 Trump Tower, would be the perfect location as far as a kickoff
7 for this relationship, correct?

8 A Well, this, this e-mail is accurate that we were going to
9 make a presentation to Melania why she should consider New
10 Sunshine as she moves forward with her beauty line.

11 Q Okay. I mean, you believe that Mr. Donald Trump is a
12 fantastic businessman. Would that be fair to say?

13 A Well, the answer to that question is yes. It has nothing
14 to do with this e-mail.

15 Q Right, right. And as you said in your e-mail to
16 Mr. Trump, that, "you are the man." I mean, you really
17 appreciated your relationship with Donald Trump, correct? By
18 the way, that is Exhibit 46. I am sorry.

19 A Well, let's put this in context. The answer to that is I
20 believe Donald is an outstanding businessman, and this was to
21 get a slot, really, at no cost for Melania on The Apprentice.

22 Q And looking at Exhibit 40, I mean, you liked the idea of,
23 you, having your picture taken with Mr. Trump. I mean, you
24 really respect him. Fair enough?

25 A Well, I liked the idea of having my picture taken with my

1 wife. Mr. Trump happened to be in it.

2 Q He was photo bombing you on that one?

3 A Well, this was during the filming of Celebrity Apprentice.
4 So, I mean, do I like my picture? I have had my picture taken
5 with Mr. Trump more than once, and I think you would probably
6 like to have your picture taken with Mr. Trump.

7 Q You consider Melania Trump to be one of the most famous
8 women in the United States of America, correct?

9 A I, I would say, yes.

10 Q All right. And you consider her a super model, correct?

11 A I, I would say that every time there is something written
12 about Melania, they state she was a super model.

13 Q And you considered her to be a world-renowned celebrity,
14 correct?

15 A I consider her to be one of the top celebrities as far as
16 class, integrity, and a model for wives and mothers, yes.

17 Q What I am referring to and from your deposition on
18 page 81, where you just referred to her as "a world-renowned
19 celebrity."

20 A I would still say that.

21 Q Absolutely. Fine. Okay.

22 Did New Sunshine conduct an analysis of the value of
23 the Melania Trump brand?

24 A Well, we hired a, a consultant, Suzanne Pengally, who
25 worked semi directly with QVC, and she certainly validated

1 that Melania would be a fabulous, fabulous brand for New
2 Sunshine getting into the beauty business.

3 Q In terms of any other research or analysis in addition to
4 what you just described?

5 A Well, I talked with the people at QVC, and her jewelry
6 line was very successful.

7 Q Okay. And you considered it a plus that Melania Trump was
8 married to Donald Trump, correct?

9 A That is true.

10 Q Okay. Her celebrity status was an attraction to you for
11 doing this license agreement, correct?

12 A That, that is correct.

13 Q And, in general, would it be fair to say that celebrity
14 and high end is attractive to you?

15 A I would say celebrity and high end is attractive to almost
16 every company that is in the beauty business.

17 Q All right. And you believed that if New Sunshine had not
18 negotiated a license agreement with Mrs. Trump, she could have
19 gone with Estee Lauder or with L'Oreal or with other big
20 beauty houses, correct?

21 A Correct.

22 Q What is your basis for believing that? In other words,
23 was there any communication that some other beauty house was
24 actually courting Mrs. Trump?

25 A I -- the answer to that is no.

1 Q All right. Now Eric Weber was the person at New Sunshine
2 who prepared spreadsheets on anticipated sales success for a
3 beauty product line, correct?

4 A Eric and other people in the organization, yes.

5 Q Do you recall seeing any other reports regarding the
6 market for beauty skincare line?

7 A We did a lot of analysis. There is all kinds of reports
8 out there on beauty lines. It is --

9 Q Well, but specifically -- I apologize for interrupting.
10 What I mean is, in terms of the projection financially
11 speaking of how the Melania line would do.

12 A We -- Eric put the projections together. We used Suzanne
13 Pengally, and we also used a broker that we had been working
14 with that had rolled out many celebrity lines, which was
15 Nathan. I can't even recall his last name.

16 Q As far as the one like Nathan or Suzanne in terms of
17 saying, okay, here are the projected sales or projected
18 revenue, the only one was Eric?

19 A Well, through the guidance of Nathan and Suzanne, Eric
20 worked with the numbers.

21 Q Okay. I am referring here now to Exhibit 12, and I won't
22 put it up on the screen. But in the book in front of you,
23 Exhibit 12, whether you recognize the license agreement.

24 A Now, is there a date? These are on dates.

25 Q No, no, no. Go to the other binder, I think. It starts

1 at Exhibit 1 and go to Exhibit 12.

2 A Okay.

3 THE COURT: Are you going to pull that up?

4 MR. TYRA: Not that one.

5 THE COURT: All right.

6 BY MR. TYRA:

7 Q I will just represent to you that from everything that we
8 have seen and heard, Exhibit 12 is a copy of the license
9 agreement that was actually signed on November 1, 2012; does
10 that look right to you?

11 A It, it looks right, yes.

12 Q All right. And were you involved in negotiating the
13 license agreement?

14 A Not, not really, no.

15 Q Okay. Would it be fair to say Scott Matthews was the
16 point person for New Sunshine in the negotiations and that you
17 regularly communicated with Mr. Matthews about the various
18 terms of the drafted license agreements?

19 A I communicated with -- Scott was in charge of the
20 negotiations, and I didn't get into each and every area of the
21 negotiations. But we had a weekly meeting as to how they were
22 going.

23 Q And the negotiations ran from about mid-2011 until the
24 license agreement was signed on November 1st, correct?

25 A That is approximately, yes.

1 Q All right. And as you understand, the lead negotiator for
2 Melania Marks was an attorney with The Trump Organization by
3 the name of Jonathan Gross, correct?

4 A Yes.

5 Q And your understanding was that as of November 1, 2012,
6 Merchant Capital had an 80 percent ownership of the MH Equity
7 Fund, correct?

8 A They, they had a passive ownership in the fund.

9 Q Of 80 percent?

10 A They, they were a limited partner. I mean, this needs to
11 be clarified, Mr. Tyra.

12 Q Okay.

13 A This was a private equity fund that the limited partner,
14 being Menard through Merchant Capital, through the operating
15 agreement, had zero say in the operations of those companies.
16 And it was a pure passive as far as what they could and could
17 not do except in funding. So --

18 Q And until Merchant Capital might remove the magic number,
19 correct?

20 A Until February 19th of 2013.

21 Q Okay. But what I am saying is, in the elaboration on your
22 explanation there, that the circumstances you were describing
23 would continue until the, until Merchant Capital might remove
24 the managing member, according to the terms of the operating
25 agreement, correct?

1 A The terms of the operating agreement run a minimum of ten
2 years through 2015, and until February 19 of 2013, which there
3 was a temporary order hearing. So I hope I answered that the
4 way you want it answered.

5 Q Well, it was really a yes or no, but okay. Now, did you
6 ever disclose Merchant Capital's ownership interest to anyone
7 at Melania Marks?

8 A I can't recall what Scott -- I know that they had asked
9 for the ownership and we sent them documents, but I do not
10 know exactly what Scott sent them.

11 Q Did you inform anyone at Merchant Capital about the
12 Melania Marks license agreement up to and including November
13 1, 2012?

14 A I did not.

15 Q Are you aware of anyone at New Sunshine informing anyone
16 at Merchant Capital about the Melania Marks license agreement
17 up to and including November 1st?

18 A I am not aware, no.

19 Q I would ask about a marketing analysis, I believe, and so
20 I hope this doesn't seem like a repetitive question. But to
21 your knowledge, was any financial analysis conducted by or on
22 behalf of New Sunshine projecting how the Melania Marks
23 product line would do from a financial standpoint other than
24 by Eric Weber?

25 A No. Eric Weber was the CFO and the president, so that was

1 his job.

2 Q Okay. Although, as you indicated on page 83 of your
3 deposition, New Sunshine had all upside. It had no downside,
4 correct? In this deal?

5 A Correct.

6 Q In fact, as you said on pages 139 through 140 of your
7 deposition, you believed that New Sunshine was blessed to have
8 an opportunity to have Melania, correct?

9 A Without a doubt.

10 Q At the first New Sunshine presentation to Mrs. Trump, is
11 it your recollection that Mrs. Trump brought out trays upon
12 trays of things that she had been working on or where she had
13 been adding vitamins or she had been taking products when she
14 went to France and she went to other places, the best of the
15 best and how she mixed them?

16 A That is accurate.

17 Q And you have testified that as Mrs. Trump became more and
18 more comfortable with others in the New Sunshine team, it
19 didn't matter to her whether you were managing the licensee,
20 New Sunshine, correct?

21 A That is accurate.

22 Q And throughout all of 2012, beginning in January of 2012,
23 during the negotiations, Jonathan Gross wanted documentation
24 from New Sunshine regarding the ownership and control of New
25 Sunshine, correct?

1 A Correct.

2 Q And, when we look at -- and this is in Exhibit 12.

3 Exhibit 12 on page 31 as you can see down there, page 31, in
4 Paragraph 17B1, it gives Melania Marks the right to terminate
5 the license agreement if there was a change in the control of
6 New Sunshine, correct?

7 A Specifically, that is accurate.

8 Q Okay. And on page 14 of -- again, looking at Exhibit 12
9 on page 14 of the signed license agreement, it specifies that
10 the respective membership interest in MHIS, which would be, as
11 you understand it, MH Investor Sun, LLC and MHIG, which is MH
12 Investors Gaming, LLC, are directly controlled by the
13 Hilberts. It says that on page 14, correct?

14 A It does, yes.

15 Q Now, you received Exhibit 13, and I will show you that.
16 It is -- again, it is in the binder but in June of 2012,
17 correct, Exhibit 13?

18 A I did.

19 Q And the only person connected with New Sunshine to whom
20 you disclosed this letter was your wife, correct?

21 A Well, I don't know if you have the exhibit in here that I
22 received from Mr. Anderson four months before, that said they
23 didn't have the right to remove me and asked if I would modify
24 the operating agreement of which I declined. So when I got
25 this letter, I, I knew that it did not tie to the operating

1 agreement. So I only showed it to my wife.

2 Q And you told Mrs. Hilbert, "I got a bullshit letter from
3 Menard," correct?

4 A That is pretty accurate.

5 Q Okay. And you do not respond in writing to the removal
6 letter, correct?

7 A I did not.

8 Q You know, you also received Exhibit 14?

9 A Is that up on the screen?

10 Q Yes. It is both in the binder and it is up on the screen,
11 or at least the first page of Exhibit 14 is on the screen.
12 This is the second letter regarding Fund II on June 26, 2012.
13 You remember receiving that around near the end of June of
14 2012?

15 A I don't recall.

16 Q Okay. And do you recall discussing this letter with
17 anyone at New Sunshine?

18 A I do not.

19 Q Okay.

20 A I, I know I didn't.

21 Q Okay. Then when we look at exhibit -- I have it as
22 Exhibit 18, and double-check this. It is the e-mails of
23 August 6 to 7 between you and Scott Matthews. On August 6th
24 to 7th --

25 THE COURT: You want to get a glass of water?

1 MR. TYRA: I have one here. Excuse me.

2 THE WITNESS: Okay. I have read it.

3 BY MR. TYRA:

4 Q And so, it says, "on ownership, this is a bit dicey with
5 everything as you know that is going on." What did you mean
6 by "everything that is going on"?

7 A Well, there is a 1 percent ownership of New Sunshine by
8 Fund II, which happened because of saving some money on taxes,
9 and the ownership of the above fund, I mean, of the above LLC,
10 and I wanted to be sure that Jonathan Gross had all that
11 information. And so, I believe that is when Scott sent
12 Jonathan the different operating agreements.

13 Q Well, did it have anything to do with what you and John
14 Menard -- having what you have referred to as a pissing
15 contest?

16 A No.

17 Q Okay. Well, let me refer you to page 207 of your
18 deposition, starting on line 14. I asked about the ownership
19 being a bit dicey. Answer, starting on line 19. "Well, the
20 only thing that I told anybody about this was that I was in a
21 pissing contest with John Menard."

22 A That is accurate. That is accurate. No, no, I said that.

23 Q Okay.

24 A You're quoting something -- you asked me a different
25 question.

1 Q All right. Now, then what we have here next is also the
2 same exhibit, Exhibit 18, when you wrote, "I don't feel good
3 about trying to BS her." You are referring to Melania,
4 correct?

5 A That is accurate.

6 Q And you were referring to a chance you could sell the
7 company, correct?

8 A Correct.

9 Q And, in fact, you never did tell Melania Marks, Melania
10 Trump or anyone at Melania Marks about the possibility or
11 reality of a change of control of New Sunshine, correct?

12 A Could you clarify that question?

13 Q Okay. Through November 1, 2012, did you ever tell anyone
14 at Melania Marks about the possibility or the reality of a
15 change of control of New Sunshine?

16 A That we could sell the company?

17 Q Right.

18 A She knew we could sell the company. She knew it was a
19 fund. She knew the fund bought and sold when the time was
20 right, and no, she, she knew that we could have sold the
21 company.

22 Q Well, what I am asking is as far as -- you are right, the
23 way I phrased the question, that is a fair answer. Did you
24 ever communicate to her that there was anything in the works
25 where it wasn't just a possibility, but that there were things

1 afoot that there either was a change of control or that a
2 change of control could be imminent?

3 A No because there was no way in my mind that it could be
4 imminent.

5 Q Okay. Looking at Exhibit 235. That is -- 235 would be in
6 the other binder.

7 A Is it on the screen?

8 Q It is on the screen, yes. Now, do you know why it was
9 that Mr. Gross was still asking for organizational documents
10 on September 7, 2012, after Scott Matthews had already
11 provided operating agreements for New Sunshine back in March?

12 A I have no idea.

13 Q And for that matter, looking at Exhibit 28, and this is
14 way back on the last page of Exhibit 28 as you can see near
15 the top of -- let me just also move it down a bit so you can
16 see. At the top of this page it doesn't show this is, of
17 course, an e-mail from Jonathan Gross, last page of
18 Exhibit 28.

19 And he is still asking on September 12th to confirm
20 New Sunshine's structure and management, and you don't know
21 why Mr. Gross is still asking about that at that point,
22 correct?

23 A I am not sure why, I know that he received the documents
24 of New Sunshine, LLC that showed that it was controlled by me
25 and my wife.

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1 Q Okay. From your deposition testimony, would it be fair to
2 say you have very little recollection of what happened on the
3 day the license agreement was signed?

4 A You mean as far as when and --

5 Q When and where you were and who was there and so on? Do
6 you know?

7 A I think that was clarified in the deposition. I think we
8 were in New York when it was signed and we were caught in the
9 Sandy hurricane.

10 Q On pages 181 and 182, actually you were saying you weren't
11 sure where you were when you signed it. I mean, that is what
12 you said in your deposition.

13 A That is what I said in the deposition, but I think after
14 the deposition we were talking amongst ourselves, and it came
15 clear that we were in New York and trapped there because of
16 Sandy.

17 Q And then -- also talking about November 1st, and we have
18 got what has been marked as Exhibit 31 where you wrote to
19 Mrs. Trump, "I need your help. Jonathan appears to have no
20 capacity to finish a transaction." And it also refers to Eric
21 Weber's authority to sign the license agreement, correct? In
22 that e-mail early on the morning of November 1st?

23 A That is accurate.

24 Q Okay. And this is stamped as 6:34 a.m. Does that sound
25 right that you were e-mailing Mrs. Trump at 6:34 a.m. more or

1 less?

2 A That is what the time says, so I am assuming that is
3 right.

4 Q Do you happen to remember being up early that morning?

5 A I am up very early a lot of mornings.

6 Q Okay. So that -- you think that would make sense that
7 early on the morning of the 1st you were sending this e-mail
8 to Mrs. Trump?

9 A Mr. Tyra, I have sent e-mails at 3:00 and 4:00 in the
10 morning. I mean, I am looking at this e-mail. Do I recall
11 doing it at that time? No. Do I recall the e-mail? Yes.

12 Q Okay. And do you recall hearing anything from Melania
13 Trump regarding whether she did, in fact, talk with Jonathan
14 that day as she indicated in her response, that she said I
15 will talk to take Jonathan. Did you ever talk to Melania
16 about that?

17 A I don't recall.

18 Q Would there have been any reason New Sunshine could not
19 have disclosed the Melania Marks negotiations to Merchant
20 Capital?

21 A It was not required.

22 Q Okay.

23 A We didn't disclose the Kardashian, same time period, to
24 Merchant Capital. There is no requirement to disclose
25 anything to Merchant Capital.

1 Q Okay. Now, you mentioned in your deposition at page 62
2 that the way that you and Mrs. Hilbert would have benefited
3 from your 20 percent interest was to create value in the
4 entity and that this was a high-value division that we were
5 embarking on. High value, does that sound right?

6 A Value creation, yes.

7 Q And that 20 percent over a threshold profit for Merchant
8 Capital or that that is a 20 percent interest over the
9 threshold profit for Merchant Capital on the operations of the
10 portfolio companies, correct?

11 A That is accurate.

12 Q Okay. What research had been done that the Melania
13 license agreement would quote, unquote, create value?

14 A Well, it was a high-value channel, beauty. It is a
15 channel that we made the decision back in 2007 that we needed
16 to get into, and we pursued it in 2007. As a matter of fact,
17 we engaged a search firm to find a top person in that sector
18 that we could have as CEO. And then when 2008 came, we
19 abandoned it until we -- which was a disaster, by the way for
20 New Sunshine, 2008 was. It took us through 2010 to really get
21 the company reorganized and back on solid financial footing.

22 Q Okay. Would there be any other way that you and
23 Mrs. Hilbert would recover a financial gain from portfolio
24 companies other than your 20 percent interest? For example, I
25 am talking about drawing fees, distributions, or benefits from

1 the fund or from portfolio companies.

2 A Well, the operating agreement we did have a fee, yes.

3 Q And were there any other benefits through portfolio
4 companies and so on that you and Mrs. Hilbert had?

5 A No.

6 Q And finally, I want to ask you, is it correct that in the
7 last two months, that you sold your vacation home in St.
8 Martin to the Trumps?

9 A We did.

10 Q Okay. How did that come about? Was that just kind of a
11 spur-of-the-moment thing or through intermediaries or what?

12 MR. FUNK: We will object on the grounds of
13 relevance.

14 THE COURT: Response on relevance?

15 MR. TYRA: What we are showing is the nature of the
16 relationship between the Trumps and the Hilberts, and my next
17 question was going to be, was the vacation home sold between
18 Mrs. Trump's deposition and Mr. Hilbert's deposition?

19 THE COURT: Overruled. Go ahead. You may answer.

20 BY MR. TYRA:

21 Q The specific question, Mr. Hilbert, was, was it through
22 intermediaries, or how was the sale handled?

23 A Donald is in -- Donald is in the big business of buying
24 properties, golf courses, expensive homes, putting them in his
25 network. And we had been trying to sell our home for about

1 four and a half years with no success, and because of the
2 horrible position that this unfounded ridiculous litigation
3 has put us into, we had to sell the home. So I went to Donald
4 and asked if he would buy it.

5 Q Okay. And was Mrs. Trump involved in those discussions at
6 all?

7 A Not at all.

8 Q Okay. And the sale was between Mrs. Trump's deposition
9 and your deposition; is that correct? In other words, within
10 about the last month or so?

11 A No. That is not correct.

12 Q About how long ago was it, then? I will represent to you
13 it was in the media, like, at the end of September.

14 A Well, it -- when, when was the Melania deposition?

15 Q Around mid-September.

16 A It was sold before then.

17 MR. TYRA: Okay. I have no further questions.

18 Thank you.

19 THE COURT: Thank you. You may cross-examine.

20 **CROSS EXAMINATION**

21 BY MR. FUNK:

22 Q Mr. Hilbert, would you place in front of you Exhibit 235,
23 which is the letter, the e-mail from yourself to Mrs. Trump?

24 A Two thirty-five?

25 Q Yes.

1 A Yes.

2 Q That is November 1, 2012?

3 A Well, hold it. This is, this is an e-mail. These are all
4 from Scott. This is 235, Section 235.

5 MR. FUNK: And I am mistaken. May I ask for
6 clarification from Mr. Tyra, Your Honor?

7 THE COURT: Yes, of course.

8 MR. FUNK: The exhibit that you were inquiring
9 about, is that 235?

10 MR. TYRA: I have it, 235.

11 MR. FUNK: May I see it?

12 THE COURT: That is not the November 1 e-mail.

13 MR. FUNK: It is not. I apologize.

14 BY MR. FUNK:

15 Q When you e-mailed Mrs. Trump on the morning of November 1,
16 2012, did you tell her and affirm then that Eric Weber could
17 sign the agreement?

18 A I did.

19 Q When Eric Weber signed this license agreement on
20 November 1, 2012, did you believe, Mr. Hilbert, that that
21 license agreement was in New Sunshine's best interest?

22 A Absolutely.

23 Q Would you explain to the Court why you felt that?

24 A Well, if you go back, we acquired New Sunshine June of
25 2006, and we acquired the company for multiple reasons. First

1 of all, it was in a thriving industry called indoor tanning.
2 It had a foothold that it was only selling the SPF product or
3 suntan lotions in Florida and also in Latin America, but it
4 had an infrastructure that we could leverage into beauty.

5 So beauty was in our mind from the time we did the due
6 dilligence. We quickly went out and bought two other indoor
7 tanning lotion companies between December of '06 and September
8 of '07. We expanded the SPF significantly starting in 2009
9 and even more in 2010 and '11, and it was time to focus on, on
10 beauty because in 2008, the indoor tanning world got
11 completely destroyed. So it was for value creation.

12 Q Did this license agreement, in your mind, open up a new
13 avenue to expand the product line of New Sunshine?

14 A This licensing agreement, I believe, was the opportunity
15 for us to really get into the beauty sector in a very major
16 way and follow it up with additional products. I think it was
17 incredibly valuable to New Sunshine.

18 Q As you looked forward at this transaction, when the
19 license agreement was signed, did you reasonably anticipate
20 that this would be a profit-making transaction for New
21 Sunshine?

22 A Oh, without a doubt.

23 Q And that it would also expand the product base?

24 A Without a doubt.

25 Q Now, the negotiation procession of this license agreement,

1 we all know, extended for more than a year. During that
2 period, were there occasions when you would instruct Scott
3 Matthews to push back on one issue or another and not agree to
4 what The Trump Organization wanted?

5 A I did.

6 Q Scott testified this morning that at least on one
7 occasion, you were prepared to scrap the deal, take the
8 product, and go elsewhere, you were so frustrated with
9 negotiations. Do you recall that?

10 A I did.

11 Q Would you have been prepared to do that?

12 A Without a doubt.

13 Q Was your goal, Mr. Hilbert, in that negotiation process to
14 get the best deal possible for New Sunshine?

15 A Yes.

16 Q And you understood that in the negotiating process, that
17 was The Trump Organization's goal for their side as well?

18 A Absolutely.

19 Q And out of that finally resulted in a mutually agreed upon
20 contract?

21 A That is accurate.

22 Q When that contract was signed, did you have the
23 expectation that it would be performed by New Sunshine?

24 A Yes.

25 Q According to the terms of the agreement?

1 A Absolutely.

2 Q New Sunshine had a governance separate from the fund
3 Merchant Capital and other upstream companies; did it not?

4 A It did.

5 Q At any time during the negotiation and execution of this
6 license agreement, did you believe you had to get approval or
7 consent from anybody upstream from New Sunshine in order for
8 New Sunshine to enter into this license agreement?

9 A No.

10 Q Why?

11 A Because Eric Weber, Scott, myself, I, I was the operating
12 CEO of New Sunshine. I was the CEO of the intermediary LLC
13 that owned New Sunshine, and the full authority to sign that
14 contract was in Eric, Scott, or my hands. And again, Eric had
15 signed contracts for the manufacturing facility that is on
16 Kentucky Avenue. Scott signed the contract for the
17 Kardashians. That was done about the same time, and the
18 Kardashian deal was a richer deal for the Kardashians than the
19 transaction that we did with Melania.

20 Q We all here know about the June 4, 2012 letter that Mr.
21 Anderson sent to you. You know what I am talking about?

22 A I do.

23 Q When you received that letter, Mr. Hilbert, did you
24 believe that that letter effectively removed you from any
25 authority and acting on behalf of New Sunshine?

1 A Well, that letter had nothing whatsoever to do with my
2 authority at New Sunshine or the intermediary LLC. That
3 letter was tied to the fund, and I have to repeat, that four
4 months before that I received a letter from Mr. Anderson
5 outlining the fact they had no right to remove me and asking
6 me to modify the operating agreement and I said no.

7 But all that being said, there was never any
8 communication to me about, you are no longer the CEO of New
9 Sunshine. You are no longer the CEO of the intermediary
10 operating company, and no communication was sent to any of the
11 operating officers, i.e., Eric Weber, which they had their
12 e-mails. They had direct lines of communication.

13 We sent monthly financial statements to Merchant
14 Capital each and every month. There was zero communication.
15 Other than in January of this year, there was a communication
16 from Rodney Smith to Eric Weber. "How is the audit coming? I
17 hope you are doing as well as you did last year."

18 Q Now the January -- excuse me, the June 4, 2012 letter from
19 Mr. Anderson to you does not mention New Sunshine, does it?

20 A It does not.

21 Q Mr. Hilbert, did you, therefore, feel that you needed to
22 disclose that June 4, 2012 letter to anybody?

23 A Not at all.

24 Q Okay. And is that why you did not disclose it?

25 A Well, I didn't disclose it for multiple reasons, but the

1 primary reason was, the letter was meaningless. It did not
2 have any relevance to our operating agreement; and again, four
3 months before that I received a letter from James Anderson
4 pointing that out. So I, I did not feel I had to disclose it
5 to anyone.

6 Q At any time, therefore, before November 1, 2012 when the
7 license agreement was signed, did you disclose either that
8 letter or the complaint filed in the Wisconsin
9 litigation -- well, that was actually after. Did you disclose
10 before the license agreement was signed, the June 4th letter
11 to anybody from The Trump Organization or Mrs. Trump?

12 A Absolutely not.

13 Q And did you feel again that you needed to?

14 A Absolutely not.

15 Q Now, we know that the Wisconsin litigation was filed on
16 November 27, 2012. That would have been three weeks after the
17 license agreement was signed, correct?

18 A Correct.

19 Q And did you at any time disclose that litigation to
20 Melania Trump or to The Trump Organization?

21 A I did not.

22 MR. FUNK: Okay. I have no further questions, Your
23 Honor.

24 THE COURT: Redirect?

25

1

REDIRECT EXAMINATION

2 BY MR. TYRA:

3 Q Just a couple of questions, Mr. Hilbert. Do you have that
4 letter with you, the one from four months earlier from Mr.
5 Anderson?

6 A No, but I'm sure Mr. Anderson has it in his file.

7 Q I have never seen it. You have mentioned it, like, three
8 or four times in your testimony without anyone asking you
9 about it. Was that letter presented to the judge in Eau
10 Claire who ended up ruling that Merchant Capital could remove
11 you?12 A There was no evidence delivered on our side as far
13 as -- there was no evidence of that in that hearing. That
14 was not an evidentiary hearing. The judge gave a temporary, a
15 temporary preliminary injunction and said that I had money
16 damages claims of which I am pursuing and also to reverse
17 that.

18 Q Okay.

19 A But I, I think I talked about that four-month letter in
20 my deposition, didn't I?

21 Q I have never seen it.

22 A I am surprised. You were so good at quoting from that you
23 would have asked Mr. Anderson for that letter but okay.24 Q I have just never seen it. Okay. So I think you had
25 testified a couple of minutes ago, responding to Mr. Funk,

1 that Rod Smith would ask for information, financial
2 information from New Sunshine; did I understand that
3 correctly?

4 A I am saying that Rod Smith did ask about how the status of
5 the audit was coming.

6 Q When was that?

7 A I believe it was January of '13.

8 Q Okay. Of 2013?

9 A Yes.

10 Q Okay. I want to get this straight. You, you, you had
11 been saying that Merchant Capital was a passive investor, but
12 then you are saying, but they were asking for audit
13 information and so on.

14 A They were a passive investor, but we had committed to them
15 that we would give them monthly financial statements. It is
16 in the operating agreement that we would give them financial
17 statements, and we decided to give them monthly financial
18 statements and also the audited statements.

19 Q And Merchant Capital was actively asking for that kind of
20 information, correct?

21 A Merchant Capital didn't have to act, actively ask for it
22 with New Sunshine because it came to them on a timely manner,
23 but they had Eric Weber's e-mail. They had his direct line.
24 They had a long relationship with Eric back in the Haverstick
25 days. So if they thought that they had truly removed me, they

1 could have easily picked up the phone and told Eric, hey,
2 don't listen to Steve Hilbert anymore, we are in charge. But
3 they never did that because they did not believe that they
4 removed me.

5 MR. TYRA: That is not responsive, Your Honor.

6 THE WITNESS: Let me, let me, let me -- Mr. Tyra.

7 THE COURT: Hold on, hold on. I don't remember what
8 the question was. Can you help me? Just a minute. Madam
9 court reporter?

10 (Read back.)

11 THE COURT: That question has been answered. You
12 may ask your next question.

13 MR. TYRA: No further questions. Thank you.

14 THE COURT: All right. Mr. Funk?

15 MR. FUNK: No further questions, Your Honor.

16 THE COURT: Thank you. Thank you, sir. You may
17 step down.

18 (Witness excused.)

19 THE COURT: You may call your next witness.

20 MR. TYRA: We rest our case in chief, Your Honor.

21 THE COURT: Thank you. Mr. Funk?

22 MR. FUNK: In accordance with the previous
23 discussions among counsel and the Court, the Defense and
24 Counterclaimant will be prepared to call their first witness
25 tomorrow morning. They are coming in from New York.

1 THE COURT: What time, 9:00?

2 MR. FUNK: Whatever time is convenient for the
3 Court. They will be arriving this evening.

4 THE COURT: Why don't you just be here at 8:45
5 again, and we will get going at 9:00? Thanks, everyone.

6 THE CLERK: All rise.

7 (Court adjourned at 3:21 o'clock p.m.)

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CERTIFICATE OF COURT REPORTER

12

13 I, Jean A. Knepley, hereby certify that the
14 foregoing is a true and correct transcript from
15 reported proceedings in the above-entitled matter.

16

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18

19 /S/ Jean A. Knepley January 15, 2014
20 JEAN A. KNEPLEY, RDR/CRR/CCP/FCRR Date
Official Court Reporter
Southern District of Indiana
Indianapolis Division

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